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No. 2759

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES.)

COLUMBIA GRAPHOPHONE COMPANY, a
Corporation,

Appellant,

vs.

SEARCHLIGHT HORN COMPANY, a Corpora-
tion,

Appellee.

VOLUME III.
(Pages 641 to 954, Inclusive.)

Upon Appeal from the United States District Court for the
Northern District of California, Second Division.

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(Deposition of William A. Lawrence.)

XQ. 47. Then how did you know what portions of the devices illustrated in any figure of any patents that were sent you you were to use and what portions to omit?

A. By taking it for granted that the desire was to show the construction of the parts in the various patent papers, and to show the contour and general construction of the article, leaving out unnecessary parts or labor for this purpose.

XQ. 48. Is it not a fact that in making these models you had in mind the desirability of making them, as far as possible, of sizes suitable for horn purposes and of leaving out parts that were unnecessary from the standpoint of phonograph horns?

A. Yes, it was.

XQ. 49. How did it happen that the model of the McVeety & Ford ventilator was provided with a tapering small end-piece similar to that used in phonograph horns?

A. In giving the foreman instructions **who was** the best fitted man to make these samples he understood there was to be an end-piece attached. My attention was called to it and as it was on I stated I did not think it made any difference and to leave it on.

XQ. 50. You were aware, were you not, when these models were made, that suits had been commenced under the Nielsen Patent against some of the phonograph companies for whom you had made the flower horns complained of or against distributors or dealers handling such horns for said companies?

A. Yes.

(Deposition of William A. Lawrence.)

XQ. 51. Was your company engaged in the manufacture of phonograph horns prior to the time it took up the flower horn in 1904 or 1905?

A. Yes. [514]

XQ. 52. Over how long a period had it been making phonograph horns prior to the commencement of the flower horn manufacture?

A. 2 to 3 years.

XQ. 53. Had your company been making and selling what was known on the market as the B. & G. horn? A. Yes.

XQ. 54. Is it not a fact that within a short time after you commenced the manufacture and sale of the flower horn it practically supplanted the B. & G. horn? A. Yes.

XQ. 55. The B. & G. horn to which you refer was made up of a conical body to which a flaring bell was soldered or otherwise fastened, was it not?

A. Yes.

XQ. 56. Is the illustration at the upper right hand corner of "Defendant's Exhibit, advertisement of Hawthorne & Sheble in the Talking Machine World for Jan. 15, 1905," a correct representation of the B. & G. horn to which you have referred as having at one time been made by you and practically supplanted by the so-called flower horn? A. It is.

XQ. 57. And is the illustration directly under the illustration of the B. & G. horn on the exhibit referred to a correct representation of the so-called flower horn that you say your company put on the market in the fall of 1904 or the early part of 1905 and that practically supplanted the B. & G. horn?

(Deposition of William A. Lawrence.)

A. It is.

XQ. 58. Did your company sell the B. & G. horn to phonograph or talking-machine companies in large numbers prior to your manufacture and sale of the flower horn? A. Yes.

XQ. 59. Did you sell the B. & G. horn to the same phonograph or talking-machine companies to which you subsequently sold the flower horn? A. Yes.

XQ. 60. Did you have anything to do with the horn business prior to the spring of 1902? A. No.

XQ. 61. From the spring of 1902 to the first part of 1906, what were your duties in the Standard Metal Mfg. Co.? [515] A. Same as at present.

XQ. 62. Did you have anything to do with the selling of your products during the years 1902-1905, inclusive? A. Yes.

XQ. 63. Did you have occasion to become familiar with the various horns that were being offered on the market during the years 1902-1905, inclusive?

A. Yes.

By Mr. HICKS.—This line of examination is objected to on the ground that it has no bearing on the direct examination and a motion will be made to strike out the preceding cross-examination as not connected with the direct examination and all similar questions and answers.

A. Yes.

XQ. 64. Did you travel about among the trade during those years? A. Yes.

XQ. 65. Is it not a fact that prior to the fall of 1904 or early part of 1905 or thereabouts the B. & G. horn

(Deposition of William A. Lawrence.)

was the popular horn that was generally made and sold not only by your company but by competing horn manufacturers? A. Yes, it was.

XQ. 66. And is it not a fact that subsequent to the fall of 1904 and early in 1905 or thereabouts the B. & G. horn was practically superseded by the flower horn on the part of not only your company, but also the competing manufacturers of horns?

A. Yes, it was.

XQ. 67. Referring to your answers to Q. 28, 29, please state whether you do not know as a fact that the Searchlight Horn Company, in addition to making the folding horns, one of which you have produced, and the four-strip or section horns, one of which you have produced, have also made and put upon the market a nonfolding horn made of a considerable number of sections, such as is illustrated in the flower-horn illustration on "Defendant's Exhibit, Hawthorne & Sheble Advertisement of 1905"?

By Mr. HICKS.—Question is objected to as indefinite and leading, there being no description of the horn inquired about, sufficient to determine what it was.

A. I think they did. [516]

By Mr. HICKS.—The answer is objected to as hearsay and defendant moves to strike it out.

XQ. 68. Do you not know that Nielsen, the patentee of the patent in suit, or the company organized by him, known as the United States Horns Co., predecessor of the Searchlight Horn Co., in ownership of the Nielsen Patent, made and offered for sale flower

(Deposition of William A. Lawrence.)

horns of the construction shown in the illustration, "Defendant's Exhibit, Hawthorne & Sheble Advertisement of January 15, 1905"?

By Mr. HICKS.—Objected to as calling for hearsay evidence and upon the ground that the question states facts upon which there is no proof.

A. It did.

XQ. 69. When Mr. Krabbe notified you of the ownership by the concern represented by him, of the Nielsen Patent and warned you against infringement did he show you any of the horns then being made by his concern?

By Mr. HICKS.—Same objection as to the facts stated in the question.

A. I am not sure whether he showed them to me personally or not.

XQ. 70. By your last answer do you mean that you may have seen such horns as were not shown you by Mr. Krabbe? A. Yes.

XQ. 71. Is it a fact that at or about the time of Mr. Krabbe's visit to you you saw horns that were made by the concern represented by Mr. Krabbe, which horns had the construction illustrated in the flower horn cut on "Defendant's Exhibit, Hawthorne & Sheble Advertisement of January 15, 1905"?

A. Yes.

XQ. 72. Prior to the time when you saw these horns that you say were made by the concern represented by Mr. Krabbe, had you seen, on the market, any horn made of metal strips so shaped that the complete horn was of a flaring contour, tapering

(Deposition of William A. Lawrence.)

from the narrow end to a wide bell end and flaring rapidly close to the bell end, having a considerable number of sections fastened together at the edges to form ribbed seams on the outside of the horn and the flaring end of the horn having a scalloped contour? A. No, I have not. [517]

XQ. 73. Had you, prior to the time you saw the horn or horns made by the concern represented by Mr. Krabbe, seen on the market any horn made of metal strips so shaped that the complete horn was of a flaring contour, tapering from the narrow end to a wide bell end and flaring rapidly close to the bell end and having a considerable number of sections fastened together at the edges to form ribbed seams on the outside of the horn?

A. No, I had not.

XQ. 74. Is it not a fact that if such a horn as is described in the last question had been upon the market in any appreciable quantity prior to the time you saw the horns made by the concern represented by Mr. Krabbe you would have had knowledge of the same?

By Mr. HICKS.—Objected to as hypothetical.

A. Yes.

XQ. 75. Were there any other styles of metal horns sold in any considerable quantity prior to the fall of 1904 than the so-called B. & G. horn?

A. Not that I know of.

XQ. 76. Did your company ever make and sell a glass horn? A. No.

XQ. 77. Do you know of the sale or offering for

(Deposition of William A. Lawrence.)

sale of glass horns?

By Mr. HICKS.—Objected to as immaterial.

A. I believe there were a few, a very few. I saw one of them.

XQ. 78. But is it not a fact, according to your experience, that the glass horns proved impracticable as a horn for phonographs? A. Yes.

XQ. 79. Referring to your answer to Q. 37 and the exhibit offered in evidence in connection therewith as "Defendant's Exhibit, Model of Hawthorne & Sheble Aluminum Horn made by Mr. Lawrence from the Testimony of Frank H. Stewart," please state whether, according to your experience and observations, any aluminum horn of the construction of this exhibit, was offered on the market prior to the fall of 1904, or early part of 1905?

A. I never saw one or heard of it, in my trips to the trade.

XQ. 80. I refer you to Mr. Stewart's answer to Q. 14. Please state [518] whether if the sections referred to in Q. 14 were cut with a straight shear, as therein stated, and the sections were then joined as therein stated they would produce a horn with a curved exterior contour like "Defendant's Exhibit, Model of Hawthorne & Sheble's Aluminum Horn Made by Mr. Lawrence from the Testimony of Frank H. Stewart," or whether they would not result in a conical horn with a straight outer contour from the small end to the bell.

By Mr. HICKS.—Question objected to on the ground that it misstates the testimony of Mr. Stew-

(Deposition of William A. Lawrence.)

art and is intended to mislead the witness.

A. Yes, they would. They would make a straight cone.

XQ. 81. Is it not a fact that the term "flower horn" came into the trade after the horns made by the concern represented by Mr. Krabbe were offered on the market?

By Mr. HICKS.—Objected to on the ground that this question, like the other questions asked in the cross-examination, has no basis in the direct examination; and also on the ground that the witness has no knowledge of the matter inquired about or that his knowledge extends far enough back in the art to enable him to make answer thereto; and a motion will be made to strike out the cross-examination of the witness for the reasons stated.

A. I believe it was.

XQ. 82. From 1902 to the fall of 1904 or early part of 1905 were you familiar with the horns being sold on the market by the Hawthorne & Sheble Mfg. Co.?

A. As a competitor we naturally would know what they were selling.

XQ. 83. And did you know what they were selling during those years in the way of horns? A. Yes.

XQ. 84. And are you familiar with what they have been selling since 1904 or early part of 1905 in the way of horns?

A. Yes, up to the time that they failed.

XQ. 85. Is it not a fact that since the early part of 1905 the Hawthorne & Sheble Company super-

(Deposition of William A. Lawrence.)

seded the B. & G. horn formerly sold by it with the flower horn illustrated in their advertisement of January 15, 1905? A. Yes. [519]

Cross-examination closed.

Redirect Examination by Mr. HICKS.

RDQ. 86. I call your attention to Mr. Frank H. Stewart's answers to Qs. 21 and 22 and to XQ. 184 and to the outlines made by him, referred to in XQs. 184 and 185, in explanation of what is said in answer to Q. 14. Please state whether, if the sections of the aluminum horn were made as described by Mr. Stewart in the parts of his testimony and the drawings to which I have called your attention the shape of the resulting horn would be a cone.

A. No, they would not.

RDQ. 87. Please compare the shape of the model horn which you have produced and the aluminum horns, made by you from Mr. Stewart's testimony, with the shape of a horn which would result from making a horn in accordance with the parts of Mr. Stewart's testimony and the two outline drawings to which I have called your attention.

A. The shape is identical with the sketches, for all practical purposes.

By Mr. HICKS.—Defendant offers in evidence the letter of Sept. 5, 1913, referred to by the witness in answer to XQ. 44. The same is marked "Defendant's Exhibit, Letter to Mr. Lawrence of Sept. 5, 1913, with Reference to the Making of Model Structures or Horns, Frank Z. Demarest, Examiner."

RDQ. 88. Did you enter into any contract on be-

(Deposition of William A. Lawrence.)

half of the Standard Metal Mfg. Co. with the Searchlight Horn Co. at or about the time that you received from the Searchlight Horn Co. the two horns which you have produced and which have been offered in evidence?

By Mr. DUNCAN.—Objected to as irrelevant and immaterial.

A. Yes, we did.

RDQ. 89. Will you please produce the contract, in view of the objection. A. I produce it.

By Mr. HICKS.—Defendant offers the contract in evidence and the same is marked “Defendant’s Exhibit Contract of May 5, 1908, Between Searchlight Horn Co. and Standard Metal Mfg. Co., Frank Z. Demarest, Examiner.” [520]

By Mr. DUNCAN.—The exhibit is objected to as irrelevant and immaterial, subject to this objection it is stipulated that the original contract may be withdrawn and a copy substituted for the original with the same force and effect as the original.

RDQ. 90. Upon the making of this contract did you receive from the Searchlight Horn Co. any of the folding horns, referred to in the contract?

A. Yes, we did.

RDQ. 91. Have you here one of the folding horns then received from the Searchlight Horn Co.?

A. Yes, I herewith produce it. It is the one that I have heretofore referred to and I offer it in evidence.

RDQ. 92. Please look at Figs. 1 and 3 of the Nielsen Patent in suit and state whether you ever saw,

(Deposition of William A. Lawrence.)

on the market, a horn for a phonograph, made up of sections of metal joined together at their edges by ribs formed, as shown especially in Fig. 3, by two outwardly-extended flanges abutting against each other?

A. I saw those made by the U. S. Horn Company.

RDQ. 93a. Is that all? A. Yes.

RDQ. 93b. And were those shown to you by Mr. Krabbe or did you see them at about the time he visited you? A. Yes.

RDQ. 94. Referring to the Hawthorne & Sheble advertisement of Jan. 15, 1905, please state whether the flower horn that went into use had seams (lock seams) like those of the horn of the advertisement or seams like the butt seams of Fig. 3 of the Nielsen Patent?

By Mr. DUNCAN.—Objected to as irrelevant and immaterial.

A. There may have been a few with the butt seam, but they were all practically lock seamed.

RDQ. 95. When Mr. Krabbe called upon you had the Standard Metal Mfg. Co. manufactured or put upon the market flower horns such as are shown in said advertisement of Jan. 15, 1905? A. Yes.

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RDQ. 96. And had other concerns put the same style of flower horn upon the market at that time?

A. Yes.

RDQ. 97. And was the Standard Metal Mfg. Co. one of the first to enter upon the manufacture of said style of flower horn? A. One of the first, yes.

(Deposition of William A. Lawrence.)

RDQ. 98. Had other concerns preceded it?

A. Yes. Hawthorne & Sheble and the Tea Tray Co. preceded us in the manufacture of these goods.

RDQ. 99. When did you begin your trips to the trade, referred to upon your cross-examination?

A. In the year 1903, 1904, possibly the latter part of 1902.

RDQ. 100. Prior to the time that you began your trips to the trade, did you have any knowledge of the horns that were on the market and manufactured for phonographs in the this country or elsewhere?

A. No.

By Mr. HICKS.—In view of the answer of the witness the motion to strike out the hearsay testimony given upon the cross-examination of the witness is repeated.

RDQ. 101. Please state, if you know, what is the practice to-day of the different phonograph companies in making up phonographs and other talking machines with respect to the employment of a horn?

A. They are making more of the concealed horn type, than they have been in the past.

RDQ. 102. Please look at pp. 8 and 9 and p. 43 of the Talking Machine World for Sept. 15, 1913, and state, if you know, whether the photographs there shown and described illustrate the policy of talking machine manufacturers to-day, with respect to the elimination of the old type of horn?

A. I believe it does.

By Mr. HICKS.—Defendant offers in evidence pp. 8 and 9 and p. 43 of the Talking Machine World

(Deposition of William A. Lawrence.)

for Sept. 15, 1913, and the same is marked "Defendant's Exhibit, Illustration and Description of Edison Phonographs, Sept. 15, 1913, Frank Z. Demarest, Examiner."

Redirect examination closed.

Recross-examination by Mr. DUNCAN. [522]

RXQ. 103. Please state whether the use of straight shears referred to in answer to Q. 14 of Mr. Stewart's testimony would produce straight sections with curved edges as shown by the Stewart illustrations shown you on your direct examination.

A. They can be cut with a pair of hand shears the blades of which are straight.

RXQ. 104. Please state whether the joining together of tapering sections cut from a rectangular oblong piece of metal such as is shown in diagram 3 of Ellsworth A. Hawthorne, Sept. 30, 1913, such sections being joined in the manner shown in diagram 4, would produce a horn with curved sides or would produce a conical horn with straight sides.

A. They would produce a conical horn with straight sides.

RXQ. 105. Please state whether, under the agreement offered in evidence, between your company and the Searchlight Horn Co. you made any payments on the flower horn that you say were made by your company. A. No, we did not.

RXQ. 106. Did you mark any of the flower horns made by your Co. with the patent number or date of the Nielsen Patent? A. No.

RXQ. 107. Did you make payments under the

(Deposition of William A. Lawrence.)

agreement, offered in evidence, to the Searchlight Horn Co. on folding horns? A. Yes, we did.

RXQ. 108. Is it not a fact that the metal flower horns made by your company as well as those made by your competitors have the several sections thereof joined by longitudinally-arranged ribs on the outside of the horn? A. Yes.

RXQ. 109. Did you not see metal flower horns having the flanges at the edges of the sections abutting each other as shown in figure 3 of the Nielsen Patent at the shop of the Bettini Co. in New York City in 1904 or the early part of 1905? A. I did.

RXQ. 110. As a practical manufacturer of tinware, would you not say that the forming of the outwardly-extending ribs shown in figure 3 [523] of the Nielsen Patent into the ordinary lock seam would be an obvious shop expedient? A. It would.

RXQ. 111. Referring to the alleged policy of the phonograph companies is it not a fact that their policy is to encourage the sale of cabinet machines because their patents on the phonograph proper have expired and they have recently obtained various patents on the cabinet construction?

By Mr. HICKS.—Objected to as grossly calling for hearsay evidence like the rest of the cross-examination.

By COMPLAINANT'S COUNSEL.—Attention is called to the fact that defendant's counsel has questioned the witness about the policy of the phonograph companies in view of which the above question would seem to be equally proper.

(Deposition of William A. Lawrence.)

A. I really could not answer that to any real satisfaction. I think it is more style than anything.

Recross-examination closed.

Deposition closed.

Signature waived.

Adjourned to Friday, at 10:00 A. M., same place.

October 9, 1913.

Met pursuant to notice.

Present: Counsel as before.

**[Deposition of William Edwin Parker, for
Defendant.]**

WILLIAM EDWIN PARKER, being duly sworn as a witness on behalf of defendant testifies as follows:

Direct Examination by Mr. HICKS.

Q. 1. Please state your name, age, residence and occupation.

A. Name, William Edwin Parker; age, 44; residence, 1551 Fairfield Ave., Bridgeport, Conn.; my present title is designing engineer for the American Graphophone Co., at Bridgeport, Conn.

Q. 2. How long have you been employed by the American Graphophone Co., and at what places, and in what capacities? [524]

A. I entered the employ of the American Graphophone Co. at Bridgeport, Conn., on December 29th, 1896, as an expert tool maker. One year later promoted to the position of general inspector of manufacture. I cannot give you any dates, but can say afterwards promoted to the position of mechanical engineer, assistant factory superintendent and pres-

(Deposition of William Edwin Parker.)

ent position, designing engineer.

Q. 3. In the course of your employment by the American Graphophone Co. at Bridgeport, Conn., which you say, began on December 29, 1896, have you had anything to do with a talking machine made and sold by that company and called the Graphophone Grand? A. I have.

Q. 4. Please state, if you know, when the Graphophone Grand was first manufactured at Bridgeport, Conn., and what you had to do with the manufacture and sale of that machine.

A. According to our Records, we shipped from the factory, during the month of December, 1898, twenty-three (23) machines. This is the first of which I have any knowledge except one model machine which was made in the laboratory under Mr. McDonald's directions, deceased, and exhibited prior to this date. My duties in regard to the manufactured product were to inspect and test the finished product.

By Mr. DUNCAN.—Answer objected to as involving secondary and incompetent testimony.

Q. 5. Have you a present recollection of when the Graphophone Grand was first made at Bridgeport, Conn.?

A. Yes; a model machine was made during the summer of 1898.

Q. 6. Have you any means of refreshing or confirming your present recollection in regard to the date when the Graphophone Grand was first made at Bridgeport, Conn.?

A. I have. The advertising literature gotten out

(Deposition of William Edwin Parker.)

by the American Graphophone Co., which fixes this date.

Q. 7. Have you here any of the advertising literature referred to by you in answer to the last question? A. I have. [525]

Q. 8. Please produce it.

A. Here, I produce it.

Q. 9. Where did you obtain this pamphlet, entitled "The Graphophone Grand"?

A. From the files of the printing department of the American Graphophone Co. at Bridgeport.

Q. 10. When was this pamphlet issued?

By Mr. DUNCAN.—Objected to as incompetent, the best evidence being the document itself, unless the witness has personal knowledge apart from the document as to the date of its printing and circulation.

A. I am unable to state positively.

Q. 11. When did you first see this pamphlet describing the Graphophone Grand?

A. During the year 1899.

Q. 12. What is there in the pamphlet which refreshes your recollection with respect to the date on which the Graphophone Grand was first at Bridgeport?

A. Extracts with dates from the Philadelphia Ledger, from the Fourth Estate, Philadelphia American, Hartford Times, Washington Times, Electrical World, New York Daily Times, New York Tribune, Washington Post, Washington Evening Star, Music Trade Review and the New York Dramatic Mirror.

(Deposition of William Edwin Parker.)

Q. 13. These extracts from the papers or publications referred to by you are all dated in December, 1898, except that the extract from the Music Trade Review appears to have no date and the extract from the New York Dramatic Mirror is dated January 21, 1899. That is so, is it not? A. That is correct.

By Mr. HICKS.—Defendant offers in evidence the pamphlet produced by the witness and the same is marked “Defendant’s Exhibit, Pamphlet Describing the Graphophone Grand of 1898, Frank Z. Demarest, Examiner.”

Q. 14. Please describe fully the work which you did in connection with the Graphophone Grand machine.

A. Inspecting and testing the finished product.

Q. 15. When did you perform this work of inspecting and testing the finished Graphophone Grand machine? [526]

A. After the factory had closed at 6:00 o’clock in the evening and starting on or about December 1st, 1898. This work on my part continued up to approximately June 15, 1899, after which date I was relieved of this work except as to having general supervision over the same.

Q. 16. While you were inspecting and testing the Graphophone Grand from December 1, 1898, to June 15, 1899, was that machine equipped with a horn?

A. It was.

Q. 17. Describe the horn or horns with which the Graphophone Grand was equipped between the dates mentioned in the last question.

A. The regular equipment of the machine was a

(Deposition of William Edwin Parker.)

small 14-inch spun or hammered brass horn for recording purposes. The large horn, which was the regular large or reproducing horn, which was 56 inches in length, was the regular equipment of the machine. No, I want to change that. The large or reproducing horn was special and was sold separate from the machine and was specified by the customer as to what kind of a horn he desired. In some instances, after approximately the first 150 machines had been completed, a special horn was used which was formed from leaves or strips longitudinally from the ferrule to the bell or large end of the horn.

Q. 18. Please describe fully this special horn composed of leaves extending longitudinally from the ferrule to the bell or large end of the horn.

A. This horn was made of bright aluminum, having a tapered ferrule approximately 12 inches long. Extending from this to the large or bell end of the horn was a series of tapered strips approximately 6 inches wide at the large end and tapering down to the ferrule. They were joined together at their edges, in what manner I cannot state, except that there was a ridge at this point, and the outer end of the horn, or bell, was cylindrical and turned over in a bead, differing from the so-called flower horn of the present day in that the outer edge of the strips were neither concave or convex; [527] but the bell itself was perfectly round.

Q. 19. Please describe a little more fully the shape of this horn made of strips of bright aluminum.

A. The horn in its general contour or shape was a

(Deposition of William Edwin Parker.)

straight taper from the small ferrule to the point where the leaves or strips were joined to the ferrule. From that outward, extending to the large end or bell of the horn, it was of a flaring shape, very similar to the well-known flower horn of the present day.

Q. 20. Please make a sketch or drawing, if you can, of the outline of one of the sections composing this horn of bright aluminum leaves.

A. That is as I remember it.

Q. 21. Please explain the sketch which you have made.

A. The sketch that I have made from memory is as near, in reduced scale, as the horn which was used in the special cases on the Graphophone Grand, the outer end being approximately 6 inches wide, the small end tapering down to possibly an inch and a half. The thickness would be .008 and .0015 of an inch. The curvature of the side would be of such a shape as would give the flaring or bell effect on the outer end of the horn.

Q. 22. You have made three figures on the sketch. Please number them 1, 2, and 3.

A. I have numbered them #1, #2 and #3 and have marked them, "plan view," "side view" and "end view."

Q. 23. Now please make a sketch or drawing, on the same sheet of paper, marking it number 4, showing the outline of the side of one of the aluminum sections when the several sections had been assembled to form the aluminum horn.

By Mr. DUNCAN.—Objected to as incompetent, it

(Deposition of William Edwin Parker.)

not being shown that the witness has knowledge to enable him to make the sketch called for.

A. This view would be approximately the same as shown in figure 2.

Q. 24. Does figure 2 indicate the flaring bell?

A. It does not. [528]

Q. 25. What I want you to do is to make a sketch, marking it No. 4, that will show the outline of one of the sections, as viewed from the side, as it would appear when assembled with the other sections to form the flaring bell of the horn as described by you.

By Mr. DUNCAN.—Objected to as leading.

A. I have made the sketch and marked it #4.

By Mr. HICKS.—Defendant offers in evidence the drawings numbered 1, 2, 3 and 4, just made by the witness and the same is marked "Defendant's Exhibit, Parker's Sketches of the Aluminum Horn made of Strips and used with the Graphophone Grand prior to June 15, 1899, Frank Z. Demarest, Examiner."

By Mr. DUNCAN.—Objected to as incompetent and secondary.

Q. 26. You say that this aluminum-strip horn consisted of two parts; first, the stem or ferrule, and, second, the bell part composed of the aluminum strips. Please state how the stem or ferrule was made, of what material and of how many pieces of the material.

A. The entire horn was made of aluminum, including the stem. I am unable to state whether the stem and ferrule, that is to say, the piece which fitted on to

(Deposition of William Edwin Parker.)

the carriage of the machine was integral with the long stem or not.

Q. 27. What I want to know is whether the stem, apart from the end which fitted on to the carriage of the talking machine, was made of one piece or of more than one piece of aluminum.

By Mr. DUNCAN.—Objected to as leading.

A. I cannot say. I have already explained that I cannot state whether it was made of one or two pieces.

Q. 28. You evidently do not understand my present question. I understand you to say that the stem or ferrule was about 12 inches long and that you cannot recollect whether the small end of the stem which fits on to the carriage was made integral with the rest of the stem or not. A. That is correct.

Q. 29. Now, that is not what I am inquiring about. What I want to know is whether you can state how the stem 12 inches long was formed [529] from aluminum.

By Mr. DUNCAN.—Objected to as leading.

A. I cannot state how it was formed. Its ultimate shape was a cone.

Q. 30. A cone 12 inches long?

A. That is correct.

Q. 31. Can you state of how many pieces of aluminum this cone 12 inches long was made up?

By Mr. DUNCAN.—Objected to as leading.

A. From one piece.

Q. 32. Can you state the height of this aluminum-strip horn that was used with the Graphophone Grand machine prior to June 15, 1899?

(Deposition of William Edwin Parker.)

A. It was approximately the same length as what we now know as a 36-inch horn.

Q. 33. Can you state what was the width of the horn at the large end, that is to say, at the extreme end of the bell?

A. Not positively; but the conformation of the horn was such that I can say it would be from 24 to 28 inches in diameter.

Q. 34. Can you refer to any horn or to any illustration of a horn which will show the shape or construction of the aluminum-strip horn used with the Graphophone Grand prior to June 15, 1899?

By Mr. DUNCAN.—Objected to as leading.

A. I can.

Q. 35. Please do so.

By Mr. DUNCAN.—Same objection.

A. I offer this cut of an advertising circular of the American Graphophone Co., which has, on p. 35, a horn whose general appearance was similar to the horn used on the Graphophone Grand, except as to the shape of the outer end of the large bell and to the size of the ferrule where it was attached to the talking machine.

By Mr. DUNCAN.—Objected to as incompetent and secondary.

Q. 36. Please specify the difference in the size of the small ferrule where it was attached to the talking machine. [530]

A. The diameter of the ferrule used on the Graphophone Grand on the inside of the ferrule was approximately five-eighths ($\frac{5}{8}$) of an inch. The diameter

(Deposition of William Edwin Parker.)

of the horn shown in the cut is approximately one inch and one-eighth ($1\frac{1}{8}$).

By Mr. HICKS.—Defendant offers in evidence the pamphlet produced by the witness and the same is marked “Defendant’s Exhibit, Pamphlet Showing, on p. 35, a Cut Illustrating the Aluminum Horn used on the Graphophone Grand prior to June 15, 1899, Frank Z. Demarest, Examiner.”

By Mr. DUNCAN.—Objected to as incompetent and secondary and the title of the exhibit is objected to as misleading.

Q. 37. There are a number of horns in this room. Do any of them illustrate the aluminum horn used on the Graphophone Grand machine prior to June 15, 1899?

By Mr. DUNCAN.—Objected to as leading.

A. There is; this horn, which is partially finished, appears to be practically of the same shape as the aluminum horn used on the Graphophone Grand except that the outer or large end of the strips are not of such a shape as to make the outer end absolutely round as the aluminum horn was which was used on the Graphophone Grand.

By Mr. HICKS.—The witness has referred to “Defendant’s Exhibit, Model of Hawthorne & Sheble’s Aluminum Horn made by Mr. Lawrence from the Testimony of Frank H. Stewart.”

Q. 38. If you press defendant’s exhibit, model horn, to which you have referred, down hard upon the floor, thereby eliminating, as far as possible, the spring of the metal, the large end of the horn approximates a

(Deposition of William Edwin Parker.)

circle, does it not? A. It does.

Q. 39. How did you come to select this model horn to illustrate the aluminum horn?

A. From recollection only, or, from memory only, I suppose would be a better word.

Q. 40. Did you ever make any personal use of the aluminum horns used with the Graphophone Grand, prior to June 15, 1899, that is, the use of such a horn aside from your work of inspecting and testing at [531] the factory? A. In a way, yes.

Q. 41. Please describe what you did.

A. I requested permission from the factory management to give an exhibition of the Graphophone Grand, which was then a novelty, at a church entertainment which was at a building rented by St. George's Episcopal Church at Clinton Ave., Bridgeport, Conn.

Q. 42. Did you obtain the permission? A. I did.

Q. 43. Did you give the exhibition? A. I did.

Q. 44. At the time of the giving of the exhibition did anything happen to the horn? A. It did.

Q. 45. What?

A. At the conclusion of the entertainment those present crowded around the machine to examine it and I having previously removed the horn from the machine, setting it on the floor, a little boy accidentally stepped on the flaring edge of the horn, thereby injuring it on one of the leaves or panels. This accident caused me considerable uneasiness, due to the fact that I knew the supply of these horns must necessarily be limited, and I was not sure whether it could

(Deposition of William Edwin Parker.)

be repaired or not; but on returning the outfit to the factory on the following day I was able to make a satisfactory repair and put the horn in such shape that it could be disposed of commercially. This accident was very vividly impressed on my mind, due to the censure that would be given me on not taking better care of this borrowed horn and machine.

Q. 46. What was the nature of the injury caused to the horn by the boy stepping on the flare of it?

A. The mark of the heel of a shoe where he inadvertently pressed the metal down on the flaring outer edge of the horn.

Q. 47. What did you do in order to remedy that injury?

A. Forced the metal back into its original position.

Q. 48. What experience, if any, have you had in the use of aluminum? [532]

A. A wide experience in the forming of small aluminum parts and also of casting aluminum.

Q. 49. When did your experience in the use of aluminum begin? A. 1890.

Q. 50. What characteristics has aluminum, that have any materiality with regard to the possibility of joining two pieces of aluminum together?

A. Up to quite recently it has been considered impractical in the arts to join aluminum except by riveting or forming the sections together in some manner so that they will be interlocking. Brazing, soldering and similar methods have not been considered, so far as my knowledge goes, a practical, satisfactory and permanent method of joining aluminum

(Deposition of William Edwin Parker.)

together, until recently, that is to say, within the past 4 or 5 years.

Q. 51. Please state, if you know, what are the characteristics or qualities of aluminum, which have determined the methods resorted to in order to join two pieces of aluminum together.

A. Do I understand you mean the recent methods of joining two pieces together?

Q. 52. You said that until 4 or 5 years ago there was no known practical, commercial way of joining together two pieces of aluminum by such a method as soldering, so far as your information went. What I want you to state, if you can, is what qualities of aluminum, if any, prevented the practical commercial soldering of two pieces of aluminum.

A. Without going into the chemical or any other analysis of aluminum, the nature of aluminum is understood to be of a greasy nature, which prevents the solder or other material from joining the two strips together. The fluxes that have been used heretofore were not of such a nature to act as a cleansing agent for the two surfaces to be joined, and it was almost impossible to join them unless by [533] practically fusing the two parts together and subjecting them to a heat which would melt the aluminum.

Q. 53. Who was the first purchaser of a Graphophone Grand talking machine?

A. I have not positive knowledge of who the purchaser was. I was present at an exhibition given in the factory office of the American Graphophone Co. and there was present at the time Mr. Hawthorne of

(Deposition of William Edwin Parker.)

the Hawthorne & Sheble Co. and several others. A few weeks subsequent to this date Mr. McDonald informed me, on my inquiry, as to what had become of the first machine, that the Hawthorne & Sheble Co. had purchased the machine.

By Mr. DUNCAN.—Objected to as hearsay and incompetent.

Q. 54. About how many of the Graphophone Grand talking machines were equipped with the aluminum horns during the period that you inspected and tested the same, prior to June 15, 1899?

A. On each machine which I inspected and tested I stamped a number. I have a clear and distinct recollection that the last machine inspected was "No. 347." I should estimate that there were not over (20) machines equipped with these aluminum horns during the period that I was engaged on this work.

Q. 55. From whom did the American Graphophone Co. purchase horns for talking machines at the time you were engaged on this work of inspecting and testing the Graphophone Grand machines up to June 15, 1899?

A. I have positive knowledge that they purchased horns from the Tea Tray Co. and from the Hawthorne & Sheble Co. There may have been other suppliers that I do not know of.

Q. 56. Please state whether you have been able to find, at the present day, one of these aluminum horns that were used upon the Graphophone Grand machine prior to June 15, 1899.

(Deposition of William Edwin Parker.)

A. I have not, but I am making a careful search at the present time. [534]

Q. 57. What do you think of the possibility of obtaining to-day a horn that was in use in 1899?

A. I consider it very remote for the reason that the aluminum horn did not retain its lustre, becoming discolored very quickly and I think that the rapid improvements that have been made on horns by covering them with a more durable covering and finishing them with Japan and other methods that the horns would be destroyed.

Q. 58. Were these aluminum horns that were used with the Graphophone Grand before June 15, 1899, without any covering of the aluminum metal whatsoever? A. They were.

Q. 59. What has been the practice of the American Graphophone Co. with respect to keeping or not keeping horns for talking machines?

A. The style and model as to shape and other improvements in talking-machine horns has changed very frequently in the past twelve or fifteen years. When the style or shape changed and our competitors adopted the improved shape we were compelled to follow suit and on numerous occasions, I would state possibly 5 or 6 times, I have personal knowledge of the fact that the horns which were in stock were either broken up and sold as junk or disposed of to parties who could find use for them. We have recently had a clean-up of several thousand horns of this nature in our plant.

(Deposition of William Edwin Parker.)

Q. 60. What was the cause of the recent clean-up of horns in plant of the American Graphophone Co.?

A. In a large measure these horns were made for the cylinder type of talking machine; and the American Graphophone Co. are not at the present time manufacturing a great many of this type of machine and these horns which were disposed of were principally for cylinder machines.

Q. 61. What is the present tendency with respect to using an exposed horn with a talking machine?

A. According to our present line of manufacture the cylinder machine [535] is dying out. There seems to be very little demand for cylinder machines as the commercial type of machine.

Q. 62. Is the cylinder machine a machine employing an exposed horn? A. In some cases.

Q. 63. Please state the present tendency, not with regard to the use of cylinder machines, but with regard to the use of an exposed horn with talking machines.

A. The tendency is entirely toward the concealed type of horn built in the cabinet and not exposed.

Direct examination closed.

RECESS.

Cross-examination by Mr. DUNCAN.

XQ. 64. According to your recollection from whom did your company get the aluminum horns that you say were used in connection with the Graphophone Grand prior to June 15, 1899?

A. I have no knowledge where they were obtained from.

(Deposition of William Edwin Parker.)

XQ. 65. Were these horns made by your company?

A. They were not.

XQ. 66. From whom was your company buying those horns at that time?

A. I had knowledge that they were buying from the Hawthorne and Sheble and Tea Tray Co. only. There may have been others.

XQ. 67. How long did your company continue buying these horns from the Tea Tray Co.?

A. I am unable to state.

XQ. 68. How long did it continue buying these horns from Hawthorne & Sheble or the Hawthorne & Sheble Mfg. Co.?

A. We are buying horns at the present date with their change of firm name.

XQ. 69. Did you continue buying horns from the Tea Tray Co. for any length of time after June, 1899? A. I do not know.

XQ. 70. Referring to the catalogue that you produced this morning, entitled "The Graphophone Grand," please state when you saw this particular catalogue for the first time; I mean the particular one that you have produced this morning.

A. One week ago to-day. [536]

XQ. 71. When in answer to Q. 11 you said that you first saw this pamphlet during 1899 what did you mean?

A. I meant that I saw the issue, not the particular produced pamphlet.

XQ. 72. Do I understand that copies of this same issue including the particular pamphlet that you

(Deposition of William Edwin Parker.)

have produced have been in the files of your company since the pamphlet was issued? A. They have.

XQ. 73. Where did you get the circular that you produced this morning in answer to Q. 34, which pamphlet is entitled "Columbia Disc and Cylinder Graphophone"?

A. I obtained that from the cost department of the American Graphophone Co.

XQ. 74. Can you state when this circular was published? A. I cannot. It is undated.

XQ. 75. It was published later than 1906, was it not?

A. Without positive knowledge I should say yes.

XQ. 76. You would believe that to be the case, would you not, from the fact that at the second page it speaks of the Columbia Graphophone obtaining the Grand Prize at Milan in 1906?

A. That would necessarily imply that it was published subsequent to that date.

XQ. 77. Where has this circular been since the time of its issuance?

A. This particular copy you refer to? It has been in the plant of the American Graphophone Co. It was in the possession of a clerk who kept it for reference only.

XQ. 78. Have you any data upon which you base your estimate as to the number of Graphophone Grands that were sold prior to June, 1899, in connection with which the aluminum horns were supplied?

A. I have no data whatever on that point. It is simply a question of memory. There was a limited

(Deposition of William Edwin Parker.)

number and I am very confident that there was not 50 and I am sure there was over 10. I used the figures that I did to get something tangible. [537]

XQ. 79. Were these aluminum horns that you have been describing in your direct testimony listed in any of your catalogues that you know of?

A. They were not.

XQ. 80. Can you give the names of any customers to whom Graphophone Grands were shipped, supplied with the aluminum horns to which you have referred?

A. I have no positive knowledge further than the statement made to me by Mr. Hawthorne in which he stated that the first model machine made by the American Graphophone Co. of the G. G. type or Graphophone Grand was equipped with this horn. It is hearsay; I cannot vouch for the truth of the statement. I might add to that statement that after the machines were inspected by me they were delivered to the shipping department and I had no knowledge of their destination or of the purchaser.

XQ. 81. Did you have any knowledge of the method followed in forming the aluminum horns that you described? A. I had no knowledge.

XQ. 82. Did you have charge of these aluminum horns before they were tested on the machines?

A. I had charge to this extent. When the horns were delivered to our receiving department and I required one of these horns to use on a machine I went to the receiving department and selected the particular horn that was specified on that particular

(Deposition of William Edwin Parker.)

shipment of machines. They were in storage.

XQ. 83. Did you have anything to do with the buying of these aluminum horns? A. I did not.

XQ. 84. While they were in storage were they under your care? A. They were not.

XQ. 85. Am I correct in understanding then that you came in contact with these horns only when you asked for one for testing purposes?

A. No, you are not correct; I received instructions to equip certain machines with certain horns. On receipt of those instructions I went to the room in which these horns were stored and selected the particular type of horn which my instructions called for. The [538] room proper was under the charge of the receiving department to receive all supplies for the American Graphophone Co.

XQ. 86. Now referring to the aluminum horns that you mentioned in your direct examination, just what did you have to do with them after you received an order and went to the store room and got the horn or horns?

A. My duties consisted first of inspecting the machine proper to see that it run quiet and regular and the horn was properly assembled. The next point was to make a dictation on the machine with the small horn to see that the recording apparatus was in working condition and third to reproduce records with the use of the horn that was to go with the machine, putting the horn on a horn-stand or crane and equipping it on the machine, having the complete unit in operating condition; after which I signed a

(Deposition of William Edwin Parker.)

statement that it was O. K. and it was then delivered to the shipping department for final disposition.

XQ. 87. How do you fix the date when you became inspector of the machines as December, 1898?

A. I fix the date by the fact that I was working in a department where the machines proper were being made, that is, the parts were being made. In order to inspect these machines it was necessary to have a quiet room. On the opposite side of the building such a room was built and I made a request to the mechanical engineer to be assigned to this work. At that time Mr. McDonald who was factory manager, was making demonstrations at various cities of the east of the Graphophone Grand and the mechanical engineer had to wait for the return of Mr. McDonald from one of these exhibitions, to consult with him as to whether I could have this position or not; and from the extracts from the advertising literature I fix that date as the 1st of December, which is also confirmed by the stock reports of the American Graphophone Co., that in December, 1898, there was twenty-three of these machines made and they came through at the [539] rate of practically one a day. That is my reason for fixing this date.

XQ. 88. How do you fix June 15, 1899, as the approximate date when you ceased to act as inspector?

A. I was very proud to be selected to inspect this product inasmuch as it was the Edison De Luxe in talking machines listed at a very high price and it was my ambition to send out five hundred of them and not have one returned with a complaint. I had

(Deposition of William Edwin Parker.)

reached No. 347, as I stamped a number on each machine, when I was arbitrarily taken off the work. I did not complete my 500. The numbers of machines that were gotten out daily varied from 1 to 6 and I estimate that it was about June 15, inasmuch as I had been working entirely at night and the warm weather had begun to come on and I was relieved by the fact that I did not have to work during the hot spell.

XQ. 89. Just what were your duties after you ceased to inspect the machines for shipment?

A. I was officially appointed as general inspector of manufacture on all talking machines made by the American Graphophone Co.

XQ. 90. How long did you continue in this position? A. To about 4 or 5 years ago.

XQ. 91. How long did your company continue making and selling the Graphophone Grand?

A. The Graphophone Grand and modifications of it, types *which known* as the "Home Grand," "A. G.," "A. R." and "A. D.," at a pure guess I should say 6 years.

XQ. 92. Did your duties subsequent to June 1899, include the general inspection or supervision of the Graphophone Grand and its various modifications? A. Yes, it did.

XQ. 93. Is it not a fact that you purchased phonograph horns from the Tea Tray Co. only a short period of time?

A. I have no positive knowledge how long we purchased horns from the Tea Tray Co., or the quantity.

(Deposition of William Edwin Parker.)

XQ. 94. Is it not a fact that the great bulk of the horns purchased by your company were purchased from Hawthorne & Sheble or its successors?

A. At that period and for some time previous to that my understanding was, without positive knowledge, that the bulk of our horn business was done with the Tea Tray Co.

XQ. 95. Isn't it a fact that from the commencement of this century the Hawthorne & Sheble Co. have practically furnished all of the horns purchased by your company?

A. I am unable to state. I would like to add that I have very little knowledge of the purchases made by the Co., my duties not bringing me in touch with that phase of the business.

XQ. 96. Did Hawthorne & Sheble or the Hawthorne & Sheble Mfg. Co. furnish your company with aluminum horns for the Columbia Graphophone Grand? A. I am unable to state.

XQ. 97. Were the aluminum horns that you described on your direct examination the only aluminum horns that were supplied by your company in connection with the Graphophone Grand?

A. All that I know of.

XQ. 98. What was the regular reproducing horn that was supplied by your company in connection with the Graphophone Grand while you were acting as inspector prior to June, 1899?

A. They were either a hammered or spun brass horn known under the trade name as 56-inch.

XQ. 99. How long did your company continue sup-

(Deposition of William Edwin Parker.)

plying the hammered or spun-brass horn as the regular reproducing horn in connection with the Columbia Graphophone Grand?

A. Up to the time that the talking machine fell off and they ceased to be manufactured it was a regular product unless other horns were specified by the customer or purchaser.

XQ. 100. Did your company make these spun or hammered brass horns? A. They did not. [541]

XQ. 101. Who made these horns for your company? A. I have no positive knowledge.

XQ. 102. Are you familiar with the so-called B. & G. horn? A. Yes.

XQ. 103. Is the general appearance and contour of the B. & G. horn correctly illustrated in the upper right hand illustration of "Defendant's Exhibit, Hawthorne & Sheble Advertisement of January 15, 1905," which I now show you? A. Yes.

XQ. 104. Please state whether the spun or hammered brass horn that you say was the reproducing horn regularly supplied with the Graphophone Grand is correctly illustrated as to general appearance and contour in the catalogue which you produced this morning, entitled "The Graphophone Grand"?

A. It is correctly shown on the outside cover of this catalogue.

XQ. 105. Do you know how these brass horns were made? A. I do not, except in a general way.

XQ. 106. Were they spun from sheets of brass or hammered up from sheets of brass?

(Deposition of William Edwin Parker.)

A. There were two kinds of horns, one which was known as the hammered brass horn, which was without a seam, and the spun horns were made sometimes with one seam and sometimes with two seams, and at a subsequent date the method of attaching the bell was changed. In fact we had several variations of manufacture on this type of horn.

XQ. 107. In both the hammered and the spun horns were not the bells made up separately and attached by various methods to the mechanical body?

A. My recollection is that the first horn of either spun or hammered brass of the large type that the bell was not attached, that it was a continuous piece. At a later date, which I am unable to fix, the bell was attached to the stem.

XQ. 108. Did your company supply B. & G. horns with the Graphophone Grand? A. They did.

XQ. 109. Were these B. & G. horns supplied in place of the spun or [542] hammered brass horns? A. They were.

XQ. 110. Did the G. & G. horn supplant or practically supplant the brass horn for use in connection with the Graphophone Grand?

A. They did not; they were used to a limited extent.

XQ. 111. What were used to a limited extent?

A. The B. & G.

XQ. 112. Your company is the manufacturer of the Graphophones and talking machines sold by the Columbia Graphophone Co.?

(Deposition of William Edwin Parker.)

A. Yes; it is now known as the Columbia Graphophone Co.

XQ. 113. Prior to the date which you fixed as June, 1899, were you called upon to inspect other machines for shipment than the Graphophone Grand? A. I was.

XQ. 114. Were aluminum horns of the construction that you described on your direct examination supplied by your Co. in connection with other machines than the Graphophone Grand?

A. Not to my knowledge, or recollection.

XQ. 115. After you became general inspector of manufacture did your Co. supply, in connection with the Graphophone Grand or other machines, aluminum horns of the construction described by you on your direct examination?

A. I have no positive knowledge on which to answer your question, anything more than that I can say that about that period the so-called flower horn began to come in from somewhere between 1900 and 1903.

XQ. 116. Referring to the particular lot of aluminum horns that you have described in your direct examination or to horns of the same particular make that you described at that time please state whether your company continued supplying such aluminum horns with the Graphophone Grand or other machines after you became general inspector.

A. My duties did not bring me in touch with the situation and I cannot answer.

XQ. 117. As general inspector did you not know

(Deposition of William Edwin Parker.)

what kind of horns were being supplied with the different machines? [543]

A. Not always, for the reason as it is to-day horns are sometimes shipped from the manufacturer direct to the district in which they are sold. Sometimes they are supplied direct from the factory.

XQ. 118. Was it not part of your duties as general inspector to be familiar with the horns that were shipped from your factory in connection with the different machines?

A. It was not. The horns, as a broad proposition, required no inspection.

XQ. 119. Then your personal knowledge of the aluminum horns you have been referring to is limited to your testing of a number of such horns that you estimate to be between 10 and 50?

A. That is correct.

XQ. 120. Do you remember seeing any such horns sent out with your machines after you became general inspector?

A. Not that I can recollect.

XQ. 121. You have testified, I believe, that you do not recollect how the leaves were joined together?

A. Nothing further than that there was a ridge formed at the junction of the two parts where the edges were brought together. The method of attaching them, I do not remember what it was.

XQ. 122. Were these horns all of one size?

A. They were, approximately.

XQ. 123. You remember how the flaring or bell portion was joined to the stem? A. I do not.

(Deposition of William Edwin Parker.)

XQ. 124. Was the 12-inch stem spun out of a single sheet of aluminum?

A. I do not remember whether it had a seam or not.

XQ. 125. How was the 12-inch stem connected to the ferrule or short stem?

A. I am unable to state whether the small end of the stem was reduced to fit upon the carriage or whether it had a separate ferrule over which the long stem was spun or rolled into it to hold the two parts together or, in fact, how it was connected.

XQ. 126. Did you ever make any attempt or observe any attempt to solder aluminum strips together in forming the horn? [544]

A. Not in a horn, no.

XQ. 127. Is it not a fact that some of the seams in the aluminum horns referred to in your direct examination were joined or attempted to be joined by solder? A. I don't think so.

XQ. 129. Have you a positive recollection on this point? A. I have not.

XQ. 130. Your company advertised the brass spun or hammered horn in its literature, did it not?

A. In various sizes, yes.

XQ. 131. It also advertised the so-called B. & G. horn, did it not? A. In various sizes, yes.

XQ. 132. I understood you to say, however, that it did not advertise on any of its circular or other advertising matter the aluminum horns that you described in your direct examination?

A. Not in the year 1899.

(Deposition of William Edwin Parker.)

XQ. 133. What is the earliest advertising matter, of your Co. that you know of, that illustrates or describes the particular aluminum horn that you testified about on your direct examination?

A. I do not believe that the horn was ever adopted due to the fact that it was unsatisfactory and they did not continue to use it.

XQ. 134. In what respects was it unsatisfactory?

A. The nature of the aluminum was such that it would not retain its lustre and color, turning black and brown and presenting a generally unsatisfactory appearance and for that reason was abandoned.

XQ. 135. Did your company at any time advertise and offer for sale an aluminum horn?

A. Yes.

XQ. 136. Is such aluminum horn illustrated in the circular that you produced this morning, entitled "Columbia Disc and Cylinder Graphophones"?

A. It is not, but we have a circular issued some time previous to this, showing an aluminum horn, which was used on our type machine A. T. This aluminum horn, however, is a cylinder horn. It is not a built-up horn. [545]

XQ. 137. The aluminum horn you refer to is a conical horn with straight sides?

A. With straight sides and flaring bell.

XQ. 138. How was this aluminum horn finished? I mean was the aluminum covered in any way?

A. It was not.

XQ. 139. Is it not a fact that the aluminum horns that you described on your direct examination de-

(Deposition of William Edwin Parker.)

veloped difficulty in connection with the seams?

A. I never heard of any difficulty of that nature.

XQ. 140. How soon were these aluminum horns that you referred to on your direct examination abandoned by your company?

A. It is my belief there was not over 50 of these horns shipped out of the factory, due to their unsatisfactory appearance after they had been in use for a little while.

XQ. 141. I gather further from one of your answers on the cross-examination that you cannot be sure that more than 10 were shipped. Is that right?

A. My first estimate was that there was approximately 25 or 30. I afterwards stated that there might have been 10; there might have been 50. It is purely a question of memory.

XQ. 142. Where did you get the impression as indicated in one of your answers on your direct examination that the so-called flower horn was involved in this controversy?

A. For the reason that I never saw a horn built up of strips such as has been described, except that it took the so-called flower-horn shape.

XQ. 143. Who asked you to testify in this case?

A. The first intimation I had of it was from Mr. Herbert Budlong, our assistant factory manager.

XQ. 144. How long ago was that?

A. About two weeks ago. He asked me if I could find him one of these horns or if I had any recollection of using such a horn. I told him I had and I

(Deposition of William Edwin Parker.)

would try and find one. I was unable to find the horn.

Cross-examination closed. [546]

Redirect Examination by Mr. HICKS.

RDQ. 145. You have spoken of a ridge upon the aluminum horns described in your testimony, at the point where two adjacent sections of aluminum came together. Please state how this ridge ran, that is, from what point it began and where it terminated.

A. The ridge started at the large end of the stem and terminated at the outer edge or large part of the bell of the horn.

XQ. 146. And did you see this ridge when the horn was placed with its large or bell end resting upon the floor? A. You could.

XQ. 147. Can you give me the names of any persons who probably saw these aluminum horns during the period when you were making your tests of the Graphophone Grand machine prior to June 15, 1899?

A. I can give you one name, positively, and I think I have two others. I think I know of two other men who can testify to the fact that the built-up or panel horn, similar in shape to the present well-known flower horn was used during the time that I was inspecting the Graphophone Grands.

XQ. 148. Please give me those names and their places of residences.

A. Mr. Frank Hinckley, Mr. E. H. Byrnes and Mr. Frank Osborne, all of Bridgeport, Conn.

By Mr. HICKS.—Defendant's counsel gives notice

(Deposition of William Edwin Parker.)

that on Saturday, October 11, 1913, at 10:00 A. M., he will take the depositions of the three persons just named by the witness or of such of them as can be obtained at this place.

Redirect examination closed.

Deposition closed.

Signature waived.

By Mr. HICKS.—Defendant offers in evidence a paragraph from p. 15 of the “Edison Phonograph Monthly Published for Trade Use Only by the National Phonograph Co.” in New York in June, 1903, Vol. 1, No. 4, entitled “Megohorn” and same is marked “Defendant’s Exhibit, Description of the Megahorn in Edison Phonograph Monthly for June, 1903, Frank Z. Demarest, Examiner.” [547]

By Mr. DUNCAN.—Objected to as irrelevant and immaterial. Subject to which objection it is stipulated that the original publication may be withdrawn and a copy of the exhibit in question spread upon the record with the same force and effect as the original.

Oct. 9, 1913.

**[Deposition of Ellsworth A. Hawthorne, for
Defendant.]**

ELLSWORTH A. HAWTHORNE, being duly sworn as a witness on behalf of defendant, resumes the stand and testifies as follows:

Direct Examination by Mr. HICKS.

Q. 259. Who, if you know, purchased the first Graphophone Grand talking machine sold by the American Graphophone Co. at Bridgeport, Conn.?

(Deposition of Ellsworth A. Hawthorne.)

By Mr. DUNCAN.—Objected to as incompetent and calling for hearsay.

A. I was informed by Pres. Easton of the Columbia Phonograph Co. that Hawthorne & Sheble purchased the first Graphophone Grand.

Q. 260. Did Hawthorne & Sheble purchase a Graphophone Grand talking machine from the American Graphophone Co.?

A. The American Graphophone Co. manufactured the machine, the Columbia Phonograph Co. sold them. The machine was invoiced to Hawthorne & Sheble by the Columbia Phonograph Co. The Columbia Phono. Co. was merely a selling organization for the manufacturing company styled the American Graphophone Co.

Q. 261. When did Hawthorne & Sheble purchase this Graphophone Grand talking machine?

A. As near as I can fix the date, in 1898.

Q. 262. You testified that Hawthorne & Sheble made two megaphones for the U. S. Navy. Since giving that testimony, have you been able to find any literature of Hawthorne & Sheble or Hawthorne & Sheble Mfg. Co. showing a large horn made and offered for sale by them?

A. I have.

XQ. 263. Will you please produce it?

A. The catalogue I produce and call attention to the cut on the back cover and also cut and descriptive matter on p. 11. The cut was made from a photograph. The workman was one of our employees and

(Deposition of Ellsworth A. Hawthorne.)

the photograph indicates the size of the horn in comparison to the workman. [548]

Q. 264. On p. 11 below the photograph of the horn and the workman are these words "height 9 ft., width of bell 3 ft., 6 inches." What do these words mean?

A. They indicate that the horn in its extreme length is 9 ft.; that the width or diameter of the bell is 3 ft., 6 inches.

XQ. 265. Above the photograph of the horn and man are these words; "This horn is only made to order. It is perfect in every detail. The top is made of brass and the bell spun out of copper, price \$150.00." Please state whether Hawthorne & Sheble Mfg. Co., ever made such a horn of brass and if so, what the construction thereof was.

A. Yes. They made a horn 9 ft. in length with bell 3 ft., 6 inches wide at the largest diameter. The bell was constructed of sections of copper, seamed together, and the sections of copper were cut wide at one end, narrow at the other, tapering and several sections joined together. It would be impractical to manufacture a horn of the height indicated in the catalogue in any other manner.

Q. 266. Are the photographs of the horn and man shown on the back of the cover and on p. 11 of the catalogue which you produced photographs of the the horn which you say the Hawthorne & Sheble Mfg. Co. made?

A. Yes, the cuts are made from a photograph.

Q. 267. How was the large end or bell of the horn, which you say was made of tapering sections of cop-

(Deposition of Ellsworth A. Hawthorne.)

per joined together, secured to the other part of the horn? A. With a seam.

Q. 268. Please state what were the comparative lengths of the large or bell part of the horn and of the other part of the horn, which you say were joined by a seam?

A. The exact dimensions I do not recollect. But in practice of manufacturing similar but smaller types of horns the bell, as a rule, is about one-half in depth in inches of the diameter of the horn. This particular horn, however, I am inclined to think was provided [549] with a very deep bell and the proportions may have been different than as applied to smaller types of horns.

Q. 269. Measuring on the photograph shown on the back of the cover of the catalogue that you have produced it appears that the distance from the extreme end of the bell to the upper line of the band where the handle appears is to the distance from said upper line of the band to the top of the horn as one is to two and a half ($1 : 2\frac{1}{2}$). According to this, the length of the bell would be $2\frac{4}{7}$ ft. and the length of the rest of the horn would be $6\frac{3}{7}$ ft. Are such measurements, founded upon the photograph, correct?

A. Undoubtedly.

Q. 270. On p. 11, it is said that the bell was spun out of copper. What did the spinning there referred to consist of?

A. The word "spun" as used in the descriptive matter in the catalogue has no bearing whatever on

(Deposition of Ellsworth A. Hawthorne.)

the construction of the horn, In some of our catalogues we stated that full-spun horns are made seamless but they were not; they had seams in them. It would be impractical to spin the bell for a horn as large as that shown in the catalogue. Spinning lathes are, as a rule, made for diameters not exceeding 8 or 10 inches; and I know of no spinning lathe in the country that would accomodate a bell of the size shown in the catalogue.

Q. 271. What became of the horn which you made 9 feet high with a bell 3 feet, 6 inches wide, shown in the photographs?

A. I am not certain how many of these horns were made, but they were made and sold for exhibitors' purposes, the idea being to create the impression that it was the loudest talking machine in the world and the horn was used at the exhibition as an advertising medium. We sold horns of this type to exhibitors; and I am under the impression that our own exhibiting Co. used a horn of this type.

Q. 272. On the cover of this catalogue the New York address of the [550] Hawthorne & Sheble Mfg. Co., Inc., is given as 297 Broadway, New York. When was it that the Hawthorne & Sheble Mfg. Co. had a place of business at 297 Broadway, New York?

A. In 1900 and the early part of 1901.

Q. 273. When did the Hawthorne & Sheble Mfg. Co. give up its place at 297 Broadway, New York?

A. My impression is it was the early part of 1901.

Q. 274. When did Hawthorne & Sheble Mfg. Co. publish this catalogue which you have produced,

(Deposition of Ellsworth A. Hawthorne.)

showing the photographs of the large horn with a man standing beside it?

A. As near as I can connect any dates, the latter part of the year 1900. It may have been the early part of 1901. However, the man who took the photograph left our employ late in 1900 or very early in 1901.

Q. 275. You have spoken of fiber horns made by Hawthorne & Sheble. Do you find any fiber horn shown in this catalogue?

A. On p. 12 are shown illustrations of fiber horns.

I have previously testified that Hawthorne & Sheble and Hawthorne & Sheble Mfg. Co. manufactured fiber horns that were tapering throughout their entire length, of similar model to the Kaiser horn as shown in the cut under which is printed the words "reproducing horn No. 201."

These horns were made in the first instance by Hawthorne & Sheble of fiber strips tapered throughout their entire length and we also constructed them by joining the tapered sections together with bookbinders' cloth. Afterwards we made reproducing horns by a method and advertised them as "seamless."

We always tried to impress our customers with the fact that if a horn was made without ribs, without seams, but in built-up sections that the seams would practically be eliminated when the horn was a small horn. We pushed that idea for years but we lost out [551] eventually because of the cheapness of the construction of the horn with seams or

(Deposition of Ellsworth A. Hawthorne.)

longitudinal ribs. A horn constructed with longitudinal ribs or seams either by lap-seaming and solder or by use of tools such as an edging machine and a grooving machine can be constructed for about .1 the cost of a horn of similar size and same materials "seamless."

Q. 276. How does the fiber reproducing horn No. 201 illustrated on p. 12 of the catalogue compare with the aluminum horns made of tapering strips which were made by Hawthorne & Sheble, with respect to the lines of the two horns?

By Mr. DUNCAN.—Objected to as leading.

A. The aluminum horns had a similar appearance in that they were tapered throughout their entire length and the large end was circular in form as shown in the cut illustrating the fiber reproducing horn. The smaller end of the aluminum horn was fastened to a tube. These tubes varied in length and diameter according to the character of the type of machine they were to be used on.

Q. 277. Can you select any horn in this room which will illustrate the aluminum horns made by Hawthorne & Sheble?

By Mr. DUNCAN.—Objected to as leading.

A. This horn with this type of bell.

By Mr. HICKS.—The witness referred, when saying "this horn" to "Defendant's Exhibit, Model of Hawthorne & Sheble's Aluminum Horn Made by Mr. Lawrence from the Testimony of Frank H. Stewart" and to a Kaiser horn when saying "with this type of bell."

(Deposition of Ellsworth A. Hawthorne.)

The WITNESS.—(Continuing.) This type of horn here illustrates the idea of our fiber horn with the bookbinders' cloth connecting the sections together. These horns were made for us by one of our workman, Gorge Kunstle.

By Mr. HICKS.—In this instance, the witness referred to "Defendant's Exhibit, Model of Horn Made in Accordance with Fig. 14 and the Description of Turpin's French Patent No. 318,742 of Feb. 17, 1902." [552]

Q. 278. Is there any statement in the catalogue which you have produced with regard to seams of the full-spun brass horns made by Hawthorne & Sheble?

A. Yes, on p. 7 at the top of the page is printed the following words:

"made throughout without seams, excepting 56-inch horn which has seam around bell."

All these horns were made with seams. The statement that they were made "without seams" is wrong. We gave the horns a finish that hid the seams, brazing, soldering, etc., because we advocated expensive horns of this type to our trade, and as the seams could not be seen on account of the finish given the horn we advertised them "without seams." It would be impractical mechanically to make horns 42 inches in length with bells 14½ and 24½ inches in diameter without having seams in the horns.

Q. 279. What was the reason of the exception of 56-inch horn on p. 7 of the catalogue?

A. We made 56-inch horns with and without a

(Deposition of Ellsworth A. Hawthorne.)

seam at a certain distance from the large end of the horn. The main reason was due to the extreme high cost of the metal and for a 56-inch horn we had to cut many more sections of metal and join them together with seams in comparison to the smaller types of horns.

Q. 280. Comparing p. 7 of the catalogue which you have just produced with p. 33 of the catalogue of Hawthorne & Sheble, which has already been introduced in evidence, please state whether the horns shown on these two pages of the two catalogues mentioned are the same horns or different horns.

A. They are the same with the exception that the 56-inch horn shown on p. 33 of the Hawthorne & Sheble catalogue illustrates a 56-inch horn without a seam at the base of the bell. The first so-called full-spun, all-brass horns made for Hawthorne & Sheble by La Forrestier and Son were made without a seam around the bell; later Hawthorne [553] & Sheble when they manufactured the so-called full-spun, all-brass horn varied the construction by making the bell of separate sections of metal and joining same to the body of the horn.

By Mr. HICKS.—The catalogue just produced by the witness is offered in evidence and marked “Defendant’s Exhibit, Catalogue of the Hawthorne & Sheble Mfg. Co. of 1900-1901, Frank Z. Demarest, Examiner.”

Q. 281. Please state whether it was the custom of the Hawthorne & Sheble Mfg. Co. and of its predecessor, Hawthorne & Sheble to number the horns

(Deposition of Ellsworth A. Hawthorne.)

made and sold by them. A. It was.

Q. 282. Can you state whether any such numbers as O 3524 and O 2824 were used ; and if so, what those numbers indicated.

A. The zero indicated that the horns were silk-finished.

Q. 283. Did the figure "2824" have anything to do with the characteristics of the horn?

A. O 2824 was a flower horn.

Q. 284. How about O 3024?

A. Also a flower horn.

Q. 285. Have you anything from which you can refresh your recollection in regard to these figures?

A. I have some pages numbers 19, 20, 15 and 16 of an old price-list.

Q. 286. And do the figures about which we have been talking appear on p. 20? A. Yes.

Q. 287. On the same page 20 under the heading "Silk-finished horns as follows" is the number O 2820 Victor K. Can you state what kind of horn is there referred to?

A. The "O" indicated "Silk-finished horn." The "28" indicates the length of the horn ; "20" indicates the diameter of the bell of the horn, or large end of same.

Q. 288. Can you state what "Victor K" refers to in connection with "O 2820"?

A. My recollection is that it was a letter assigned to a certain type of machine manufactured by the Victor T. M. Co. or its predecessor.

Q. 289. Whose price-lists were these on pp. 15, 16,

(Deposition of Ellsworth A. Hawthorne.)

19 and 20, which you have just produced? [554]

A. They were from a price-list published by Hawthorne & Sheble Mfg. Co.

By Mr. HICKS.—The pages produced by the witness are offered in evidence and marked “Defendant’s Exhibit, Price-list pp. 15, 16, 19 and 20 of Hawthorne & Sheble Mfg. Co., Frank Z. Demarest, Examiner.”

Direct examination closed.

XQ. 290. When and where did you get the pages just offered in evidence, pp. 15, 16, 19, and 20?

A. They were handed to me by one of my employees yesterday. I had made a request to a number of my employees that have been in my employ for several years to see if they could find any of the literature published either by Hawthorne & Sheble or Hawthorne & Sheble Mfg. Co.

XQ. 291. Where are the other pages making up this price-list? A. I do not know.

XQ. 292. Have you seen the other pages of this price-list recently? A. I have seen similar pages.

XQ. 293. When and where?

A. I cannot state that they were the identical pages but similar pages in similar price-lists at my home.

XQ. 294. Can you, without reference to the pages of the price-list produced by you, state the construction and description of any given number of horns?

A. I could try.

XQ. 295. For example, what was the shape and construction of the horn that bore the number O 42,249?

(Deposition of Ellsworth A. Hawthorne.)

A. "O" indicated silk finish; "42," 42 inches in length; "24" indicated the diameter of the bell or the horn at the largest end. This horn evidently was made with a bell fastened or seamed or brazed or soldered or reamed to the top or upper portion of the horn and the "9" would indicate the depth of the bell.

Q. 296. Can you produce a complete price-list of which pp. 15, 16, 19 and 20 already produced by you are a part?

A. I do not think so as I am not positive they are in existence. [555] I have no knowledge to that effect.

XQ. 297. How did it happen that you got only these four pages and not the others?

A. Because practically the only type of horn constructed in later years has been of the flower type in the cheaper patterns or styles. It was probably preserved for the flower horn information.

Q. 298. Your idea is then that the reason that only these pages were produced is that the other pages had nothing to do with horns?

A. They may have had but my impression is that they deal with accessories such as diaphragm-glasses, carrying-cases, horn-stands and articles that were not manufactured by Hawthorne & Sheble Mfg. Co. in the Bridgeport factory.

XQ. 299. Is the only explanation you can give for the production of only pp. 15, 16, 19 and 20 of this price-list that these were the only pages of the price-list dealing with horns?

(Deposition of Ellsworth A. Hawthorne.)

A. I made an inquiry among my employees to see if they could find any information in particular about flower horns, and these pages were handed to me.

XQ. 300. Have you seen the other pages of the price-list from which these pages 15, 16, 19 and 20 were taken? A. There were other pages.

XQ. 301. Where are they now?

A. I do not know.

XQ. 302. Where did you see them?

A. There were other pages relating to carrying-cases, horn-stand, etc.

XQ. 303. When did you see those pages?

A. I saw them yesterday.

XQ. 304. Did those pages have anything to do with horns? A. They may have.

XQ. 305. Who removed these pages 15, 16, 19 and 20 from the other pages of the price-list?

A. The workman who handed the pages to me.

XQ. 306. And where are the remaining pages now?

A. I do not know; possibly he has them. [556]

XQ. 307. What did you do with the remaining pages after you looked over them?

A. I don't recollect looking over them; the workman handed me these pages.

XQ. 308. How do you know that the other pages related to various accessories and not to horns?

A. They may have related to horns; the reason that I stated the other pages related to accessories was because, if my memory serves me well, I had the price-list arranged years ago.

XQ. 309. When you saw these other pages yester-

(Deposition of Ellsworth A. Hawthorne.)

day did you look them over to see what they contained? A. No.

XQ. 310. Were you interested to see what the other pages referred to?

A. Not particularly, because I had asked this party to try and produce something that was principally about flower horns. If the price-list contained other information about horns it was such as is covered in the catalogues that have already been submitted by me and probably covered full-spun horns, brass horns, aluminum horns, B. & G. horns, and all kinds of horns, the same as all Hawthorne & Sheble and Hawthorne & Sheble Mfg. Co.'s catalogue and price-lists covered.

XQ. 311. You mean to say that all of the price-lists of the Hawthorne & Sheble Mfg. Co. illustrate full-spun brass horns?

A. Not in later years because the sale dropped off on account of the high prices asked for that type of horn as compared to the more cheaply constructed types such as the B. & G. or the hammered brass horn.

XQ. 312. Did you ask the workman who gave you these pages whether they were the only pages that had any reference to flower horns?

A. He handed me the pages. I thanked him for them; I was not interested in the balance as I wished to obtain some printed information in regard to flower horns.

XQ. 313. How do you know that the other pages did not contain printed [557] information in regard to flower horns?

(Deposition of Ellsworth A. Hawthorne.)

A. Because he told me that this was the reference to flower horns that I had asked for.

XQ. 314. Did you ask for some particular reference to flower horns? A. Yes.

XQ. 315. Exactly what was it that you asked that workman to get you; a printed statement in some catalogue or price-list?

A. I told him that I wanted to connect the lettering, for instance, the letter "O" or figure "O."

XQ. 316. Do I understand that you yourself made no examination of the remaining pages of this price-list? A. I had no occasion to.

XQ. 317. I again ask you whether it is a fact that you made no examination of the remaining pages of the price-list from which these pages 15, 16, 19 and 20 were taken? A. I did not.

XQ. 318. Those remaining pages may contain other reference to flower horns, may they not?

A. The workman handed me what I asked for. Possibly they did. I was after information in regard to the letter "O."

By Mr. DUNCAN.—The offering in evidence as an exhibit for defendant of pp. 15, 16, 19 and 20 of the price-list referred to is objected to as insufficiently proven and as being only part of a document the whole of which should be produced; and all the testimony of the witness in regard to the flower horn referred to in the latter part of his deposition this afternoon is objected to on the ground that it is based upon the pages produced, that have not been properly proven and are incompetent evidence; and a motion

(Deposition of Ellsworth A. Hawthorne.)

is now made to strike the exhibit and the testimony in question from the record.

XQ. 319. Have you any objection to producing the remaining pages of this price-list?

A. None, whatever.

XQ. 320. Will you send the same to defendant's counsel for examination by complainant's counsel?

By Mr. HICKS.—Objected to as not directed toward any fact. Moreover the entire matter is immaterial, the only question is to what kind of horns these pages referred to as foundation for further testimony. [558]

A. I do not know whether the balance of the pages are in existence or not.

XQ. 321. If they are in existence will you send them to defendant's counsel for inspection by complainant's counsel?

A. I will try and produce them.

XQ. 322. When and where did you obtain the Hawthorne & Sheble Mfg. Co.'s catalogue that was offered in evidence this afternoon?

A. I found it among some old papers.

XQ. 323. Who underscored in red ink certain words on pp. 7, 11 and 12 of this catalogue?

A. I did. I underscored them to call Mr. Hick's attention to them when I wrote him about the catalogue.

XQ. 324. When did you underscore these words?

A. I believe it was two days ago, 3 days ago, possibly.

XQ. 325. At p. 5 of this catalogue are the words

(Deposition of Ellsworth A. Hawthorne.)

"Hammered brass horns with spun bells." Were the bells of these horns full-spun or not?

A. Yes, they were in many instances. Smaller bells were drawn in draw presses.

XQ. 326. Were the larger bells of the hammered brass horns with spun bells spun as stated at p. 5 of this catalogue? A. Up to certain sizes.

XQ. 327. On p. 6 of the catalogue appear the words "Special Hammered Brass Horns, Flaring Spun Bells." Were the bells of these horns spun or not?

A. The bells referred to as the flaring bell horn were bells made out of strips of metal, wide at one end, narrow at the other, tapering throughout their length and brazed together.

XQ. 328. Do you mean to say that this method of construction was used with the 24-inch horn with a bell of 13 inches?

A. No, not if the horn was a hammered brass horn.

XQ. 329. Did you mean to say that the construction of a bell that is described in your answer to XQ. 325 was present in the special hammered [559] brass horn 30 inches long with bell of 16½ inches wide?

A. It was customary to spin the bells for hammered brass horns with bells 16½ inches wide.

XQ. 330. Do you mean to say that the sectional construction described by you in answer to XQ. 325 was used in the special hammered brass horn 42 inches long with 20-inch bell?

A. We made some bells with that construction when we first manufactured because we did not have

(Deposition of Ellsworth A. Hawthorne.)

the tools for making the bell otherwise.

XQ. 331. Did you make any spun bells 20 inches in diameter for 42-inch horns?

A. Of the shallow bell type, yes.

XQ. 332. On p. 7 appear the words, "Bell spun-brass horns made throughout without seams excepting 56-inch horn has seam around bell." Am I correct in understanding that the first part of this statement, namely, "made throughout without seams," is not correct? A. It is positively incorrect.

XQ. 333. Do I understand that it was intentionally incorrect because you wanted to give the impression that there were no seams in your horns?

A. We had several reasons. That was one of them; another was that we did not care to publish to the public our methods of manufacture. The more mystery there is around manufacturing and the greater impression that you can create that you have something wonderful the better prices follow.

XQ. 334. Did you feel justified, in order to maintain the mystery in regard to your horns, to make misstatements concerning the same in your catalogues? A. Certainly.

XQ. 335. Why, if you wished the public to believe that there was no seam in your so-called full-spun brass horns did you state, at p. 7 "excepting 56-inch horn has seam around bell"?

A. I have previously stated that we made that type of horn with and without seams. The horns manufactured in the early days of [560] Hawthorne & Sheble of the so-called full-spun type were made

(Deposition of Ellsworth A. Hawthorne.)

without seams or bands around the bell; later we used a band and a seam and so stated in our later catalogues.

XQ. 336. Why did you not finish this seam around the bell like the longitudinal seams so that it could not be seen by the public and why did you not state as to this horn that it was made throughout without seams?

A. On account of the expense of making the horn. It would be made that way.

XQ. 337. Can you not finish this circular seam around the horn so that it would be as invisible as the longitudinal seam? A. Not as well.

XQ. 338. Why not?

A. Because of the difficulty of connecting the bell to the body of the horn, the seam would be more likely to show. Our first 56-inch horns, the so-called full-spun horns, were made out of long strips of metal, tapered at one end, narrow at the other, curved throughout and brazed together. We adopted the latter type of manufacture on account of its cheapness. We were cutting costs.

XQ. 339. You referred in your catalogue to silveroid horns with spun bells. Please state whether the statements in your catalogue that these silveroid horns have "spun bells" were correct.

A. The statement is correct.

XQ. 340. You also spoke of "aluminum horns with spun bells, very attractive in appearance, will not tarnish." Please state whether these statements are correct.

(Deposition of Ellsworth A. Hawthorne.)

A. Some types of horns were provided with spun bells of aluminum and other bells were drawn in draw presses. Other aluminum horns were made of the flower type with longitudinal seams practically of bell like the flower horn.

XQ. 341. Did you make an aluminum horn 18 inches long with a bell of 11 inches in diameter?

A. Possibly we did; we made all sizes. [561]

XQ. 342. Was that horn used as a reproducing horn?

A. It could be used both ways, as a recording and as a reproducing horn.

XQ. 343. Do you remember what your "large reproducing N" was?

A. It may have related to a Bettini type of reproducing or it may have been an Edison. Edison at one time lettered his reproducers, if I recollect correctly; or he lettered his machines.

XQ. 344. Did you make any all-aluminum horns for the Columbia Graphophone Grand Machine?

A. I did.

XQ. 345. On whose order?

A. Probably the Columbia Phono. Co.; it may have been on the American Graphophone Co.'s order blank. We had direct relations with both companies.

XQ. 346. Have you any definite recollection of the horns that you made for the American Graphophone Co. or Columbia Phonograph Co.? A. Fairly so.

XQ. 347. Did you make any horns for the Graphophone Grand that had a conical stem or body made out of one piece of aluminum and a flaring bell that

(Deposition of Ellsworth A. Hawthorne.)

was connected to the conical body?

A. We made aluminum horns for the Columbia Co. or possibly, American Graphophone Co., that had tube connections at the smaller end of varying lengths and diameters, according to the type of machine or use they were to be put to.

XQ. 348. My question related or was intended to relate to Graphophone Grand. Will you please confine yourself to that machine and answer the question.

A. We made them for the Graphophone Grand.

XQ. 349. Of what size did you make all-aluminum horns for the Graphophone Grand?

A. I do not recollect the exact dimensions.

XQ. 350. Did you make them in more than one size for that machine?

A. The type of horns that were made for them were connected at the small end with a large Graphophone Grand reproducer. I think the diameter was about an inch and a half at the smallest end. The [562] tube portion connecting with the upper ribbed portion was probably 10 or 12 inches in length.

XQ. 351. Is it not a fact that your firm or the Hawthorne & Sheble Mfg. Co. discovered a difficulty with its all-metal horns because of unpleasant and confusing sound made by the metal?

A. I have answered a similar question before. I can only reiterate what I previously stated. Opinions are largely personal in regard to the character of reproduction. We made horns for our customers. We made any and all kinds according to the wish of the customer. If they wanted them in aluminum we

(Deposition of Ellsworth A. Hawthorne.)

made them; in brass, likewise. My personal preference is for a 56-inch so-called full-spun concert horn which was one of the first horns ever designed by me. I believe it was in 1894 or 1895.

XQ. 352. Is it not a fact that your firm or the Hawthorne & Sheble Mfg. Co. recognized that the all-metal horns created confusing tones that you thought ought to be remedied if possible?

A. At a certain time Mr. Asa Vandergrift of the firm of Scheip & Vandegrift of Philadelphia brought to my office in Philadelphia a wood horn and stated that he had a horn that would beat the metal horn and put it out of business. It was so much superior.

I told Mr. Vandegrift that that was bunco; that I did not think his wood horn was as good as a metal horn and I asked him to turn his back while the machines were being operated and to pick out his wood horn, which he claimed was so superior. I used for that purpose a horn of metal, brass, and the seams were brazed. Mr. Vandegrift listened to a number of selections. I asked him to designate each time that I operated the machine, to state whether I was reproducing a record with a wooden horn, his sample, or an all-brass horn which I had shown to him before making the test. Mr. Vandegrift made his selections, designating, as he thought, which horn was reproducing. When I finished the demonstration I asked him, "What [563] horn am I using now as I am completing the record?" He stated, "You cannot fool me. That's my horn." I asked him to turn around and look at it. He did so. It was the all-metal horn.

(Deposition of Ellsworth A. Hawthorne.)

His excuse was that he would bring his partner up; he was a musician or understood music, had a musical ear; and he, his partner, would show me quickly which was which or indicate them with his back turned. Mr. Vandegrift at that time proposed to me that our concern handle his wooden horn exclusively or become, in other words, exclusive agents for it; but I told him that I did not think we would care to undertake the proposition. The horn was too expensive, bulky and it did not improve the reproduction to my idea.

XQ. 353. Now, will you please answer my question whether it is not a fact that your company recognized that the all-metal horn produced certain undesirable and confusing tones?

A. I don't think so, not if the horn was correctly constructed.

XQ. 354. Is it not a fact that your company undertook, in 1903 or thereabouts, to remedy the confused and unsatisfactory production of sound from the all-metal horn?

A. Our Co. applied for a patent on a horn covered with bookbinder's cloth, which was designated as silk-finish horns. We had some difficulty in securing the patent because the Patent Examiner said he could not detect any difference between the ordinary type of horn and the silk-finish. Mr. Sheble, who obtained the patent, told me he had a difficult experience in trying to convince the Patent Examiner that the horn really had merit. Frankly, I don't think the silk finish improved the horn one whit, unless it happened

(Deposition of Ellsworth A. Hawthorne.)

to be that the horn was not correctly constructed mechanically, such as loose seams or imperfect workmanship, when it would be likely that the cloth covering would eliminate any disturbance in the reproduction, from such imperfect workmanship.

XQ. 355. Your Co. did obtain a patent on the so-called silk finish of phonograph horn, did it not?
[564]

A. I believe the patent was issued to Mr. Sheble and by him assigned to Hawthorne & Sheble Mfg. Co.

XQ. 356. This is a copy of the patent in question, is it not, No. 759,639, patented May 10, 1904, application filed July 21, 1903, by Horace Sheble, assignor to Hawthorne & Sheble Mfg. Co.?

A. The patent information is correct. One main object Hawthorne & Sheble Mfg. Co. had in placing this horn on the market was to improve the appearance of the horn and to obtain a better price for their wares.

XQ. 357. I call your attention to the following language appearing at lines 35 and following of the patent in question:

“In horns for the purpose noted it has hitherto been customary to construct them of either polished brass or bronze throughout their entire length or to simply have them polished at their mouth or bell, while covering with black japan or other similar material the body or conical portion. To those accustomed to the use of machines for reproducing sound it is well known that hitherto there has always been present an ob-

(Deposition of Ellsworth A. Hawthorne.)

jectionable metallic note produced by the machine when in operation, due in a great measure to the fact that the vibrating column of air within the horn sets in vibration the metal of the horn itself, which in turn causes vibrations of air, so as to give rise to the objectionable note or tone mentioned. I have found, however, that by covering the body or conical portion of the horn with a layer of cloth, preferably adherent to the horn, the quality of the sound reproductions is greatly improved and that with the entire absence of the objectionable metallic sound heretofore always present."

and ask whether the statements here quoted are true or not.

By Mr. HICKS.—Objected to as not proper cross-examination. Complainant's counsel has been cross-examining the witness for a considerable time upon matter not touched upon in the direct examination. The statements of Mr. Sheble in the patent in question can have no bearing whatever upon the examination of Mr. Hawthorne.

A. I don't think there was much in Mr. Sheble's claim because I can't say we made a fortune out of the sale of silk-finished horns. My recollection is that we cleaned out a large amount of the product in the process of manufacture and material for the silk-finished horn by putting it in the scrap pile. [565]

XQ. 358. Do you class the statements made in the patent in question in regard to the prevention of the objectionable metallic note in the horns previous to

(Deposition of Ellsworth A. Hawthorne.)

your silk-finish horn as in the same incorrect class as the statements in your catalogues?

A. I will not attempt to assert that my opinion in this respect is all-pervading. Mr. Sheble and I frequently differed about certain types of horns. I told him that I would not give him a hoot for a silk-finished horn as compared to my pet, the so-called all-brass, full-spun 56-inch concert horn. We often had arguments about it. He stuck to his point; I stuck to mine. I am still of the same opinion. I have no doubt that Mr. Sheble may be as insistent about his invention, the silk-finish horn, as I am of my conception of the 56-inch so-called full-spun concert horn.

XQ. 359. Is it not a fact, however, that after obtaining the patent in question, your Co. advertised the advantages of the silk-finish horn as preventing the objectionable metallic note always present in horns previous to your silk-finished horns?

A. Why not? We had a patent on a horn, something difficult to obtain because horns are nothing more than ordinary funnels.

XQ. 360. It is a fact, is it not, that you had advertised your silk-finished horn as having the advantages referred to in the last question?

By Mr. HICKS.—Objected to as calling for secondary evidence and not proper cross-examination.

A. Undoubtedly, we did.

Cross-examination closed.

Redirect Examination by Mr. HICKS.

RDQ. 361. Did Hawthorne & Sheble Mfg. Co. sell

(Deposition of Ellsworth A. Hawthorne.)

flower horns according to the figures set forth in pp. 15, 16, 19 and 20, setting forth list prices?

A. They did.

Redirect examination closed.

Deposition closed.

Signature waived. [566]

Oct. 11, 1913.

Met pursuant to adjournment.

Present: Counsel as before.

**[Deposition of Eugene Henry Byrnes, for
Defendant.]**

EUGENE HENRY BYRNES, being sworn as a witness on behalf of defendant, testifies as follows:

Direct Examination by Mr. HICKS.

Q. 1. Please state your name, age, residence and occupation.

A. Name, Eugene H. Byrnes; age, 43; residence, 212 Poplar St., Bridgeport, Conn.; occupation, tool maker employed by the American Graphophone Co.

Q. 2. How long have you been employed by the American Graphophone Co. and at what place or places?

A. Since December 12, 1898, I have been employed at the American Graphophone Co. as a tool maker and later as a foreman of the laboratory experimental department.

Q. 3. Do you know the Graphophone Grand talking machine made and sold by the American Graphophone Co.?

A. I know of, have seen it, worked on it.

Q. 4. When did you first see a Graphophone Grand

(Deposition of Eugene Henry Byrnes.)

talking machine and where?

A. At the factory of the American Graphophone Co. on December 12, 1898, at Bridgeport, Conn.

Q. 5. What horn or horns were used on the Graphophone Grand talking machine at Bridgeport, Conn.?

A. I know that they were putting out a 10-inch brass horn to start with. I later saw a larger horn on a Grand machine in Mr. McDonald's back office.

Q. 6. When was it that you saw this larger horn on the Graphophone Grand machine in Mr. McDonald's back office?

A. I cannot state the exact date but I would say that it might be in February or March, 1899.

Q. 7. Were you acquainted with Mr. William E. Parker? A. Yes, sir.

Q. 8. Was Mr. Parker at work in the factory of the American Graphophone [567] Co. at Bridgeport, Conn., when you saw this larger horn on the Graphophone Grand in Mr. McDonald's back office?

By Mr. DUNCAN.—Objected to as leading.

A. Yes, sir.

Q. 9. Do you know what Mr. Parker's duties were at that time?

A. He was a tool maker, also doing the inspecting of the Graphophone Grand.

Q. 10. Please describe this larger horn on the Graphophone Grand machine, that you saw in Mr. McDonald's back office in February or March, 1899.

A. The horn appeared to me to be stubby, short. The reason I say this is we were accustomed to seeing the long 56-inch brass horn, and this horn seemed to

(Deposition of Eugene Henry Byrnes.)

be so much shorter that I remarked it to a fellow workman.

Q. 11. About how long was this stubby horn?

A. As I could judge now it would be about 36, 38 inches long.

Q. 12. Of what material was this horn made?

A. It was made of a white metal.

Q. 13. Please go on and describe what you recollect in regard to this horn of white metal.

A. I remember when I remarked to a fellow workman that it was a short stubby horn that his answer was that it looked like a lot of slats put together. We could not examine the horn closely on account of the possibility of Mr. McDonald's stepping into his back office. That is about all that I can think of just now.

Q. 14. What was your observation at that time in regard to the "slats" mentioned?

By Mr. DUNCAN.—Objected to as leading.

A. Why, the horn itself was something out of the ordinary. We were not acquainted with the appearance of such a horn. I personally had never seen anything like it before. [568]

Q. 15. Please state the construction and shape of this horn.

By Mr. DUNCAN.—Objected to as incompetent in view of the previous answers of the witness.

A. The horn seemed to have a large mouth or bell, as it were, tapering down at a curve to a certain point, I should judge about 8 inches from the small end. It appeared to be straight from that point to the small end.

(Deposition of Eugene Henry Byrnes.)

Q. 16. Please take this piece of paper and make a sketch of this horn of white metal, which you saw in Mr. McDonald's back office in February or March, 1899.

By Mr. DUNCAN.—Objected to as incompetent in view of witness's answer to Q. 15.

A. I have made the sketch requested.

Q. 17. Please number the sketch Fig. 1.

A. I have done so.

Q. 18. What does the series of lines which you have drawn from the end of the bell to the conical piece at the small end of the horn represent?

A. Those represent what I mean by slats formerly spoken of.

Q. 19. Of how many slats was the bell portion of this horn of white metal composed?

A. I could not state the exact number. I should judge 12 or 14.

Q. 20. Now please make another drawing, numbering it Fig. 2, showing the outline of each of the slats composing the bell of the white metal horn.

By Mr. DUNCAN.—Objected to as incompetent in view of the answer to Q. 15.

A. I have done so.

Q. 21. Now please make a third sketch, numbering it Fig. 3, showing the outline of the section or slat shown in Fig. 2, when looking at it from one side, as the section or slat would be when assembled in the horn.

By Mr. DUNCAN.—Same objection.

A. I have done so. [569]

(Deposition of Eugene Henry Byrnes.)

By Mr. HICKS.—The sketch made by the witness, consisting of Figs. 1, 2, and 3, is offered in evidence and marked “Defendant’s Exhibit, Byrnes’ Sketch of White Metal Horn seen in Mr. McDonald’s Room at Bridgeport, Conn., February or March, 1899, Frank Z. Demarest, Examiner.”

By Mr. DUNCAN.—Same objection.

Q. 22. What was this white metal of which this horn was composed?

By Mr. DUNCAN.—Objected to as leading.

A. The metal known as aluminum.

Q. 23. Did you afterwards see any other horns like this white metal or aluminum horn at the factory of the American Graphophone Co. at Bridgeport, Conn.?

A. I did.

Q. 24. Where were they and what, if anything, was being done with them?

A. On the loud machine called the Higham-o-phone while experimenting we used a similar horn but cut the end off so as to put it on the larger reproducing shank. On finding that the soft metal was splitting I personally riveted a brass tubing on to the horn.

Q. 25. When was it that you did this?

A. I should judge 4 or 5 years after originally seeing the horn previously spoken of, in Mr. McDonald’s back office.

Q. 26. Did you observe anything with respect to the packing or shipping of the white metal or aluminum horn at the factory of the American Graphophone Co. at Bridgeport, Conn.?

A. Yes. The laboratory was in one corner of the shipping department and it was necessary for me to

(Deposition of Eugene Henry Byrnes.)

pass through the shipping department. On several occasions I would stop and look at different horns while in the course of packing. I remember very well seeing several of those horns being packed.

Q. 27. When was it that you saw several of these white metal or aluminum horns being packed?

A. In the year 1899.

Q. 28. Do you know from whom the American Graphophone Co. has purchased horns for Grands?

A. I have no way of absolutely knowing. It is generally known that [570] they get horns from Hawthorne & Sheble Co. I know that they make horns; I have bought horns from them myself; I have worked in their plant and repaired tools for making horns.

Direct examination closed.

Cross-examination by Mr. DUNCAN.

XQ. 29. How did you fix the date of December 12, 1898, as the date when you entered the employ of the American Graphophone Co.?

A. I have it in a book that I keep my time in; also the pay-roll of the American Graphophone Co. gives the same date.

XQ. 30. Have you looked up the date recently?

A. Yes.

Q. 31. At whose request?

A. I wanted to make sure for my own satisfaction.

XQ. 32. You wanted to make sure in connection with your testimony you were to give here?

A. I was asked when I came to work for the company; I gave this date, December 12th, 1898, and

(Deposition of Eugene Henry Byrnes.)

went to the office and asked them if that date was right. They answered me, yes.

Q. 33. Who asked you to come here and testify?

A. Mr. William E. Parker asked me if I could remember 10 or 15 years back. I stated in regard to some matters of importance. Then he asked me if I remembered the Graphophone Grand; I answered yes because I started to work on them when I went to work at the Graphophone Co.

XQ. 34. How long did the American Graphophone Co. continue making the Graphophone Grand?

A. To the best of my recollection they discontinued billing the Grand in 1902. I do know that we occasionally build one now.

XQ. 35. Didn't your Co. advertise and offer for sale the Graphophone Grand in 1905?

A. I do not know.

XQ. 36. What horns were regularly supplied with the Graphophone Grand up to 1902, if you know?

A. They regularly supplied a 10-inch horn. [571]

XQ. 37. Was that horn made of a single sheet of brass? A. No.

XQ. 38. How was it made?

A. The bell was one piece, tapering down to the small end one piece.

XQ. 39. How long did the American Graphophone Co., to your knowledge, supply the 56-inch horn, that you have spoken of, with the Graphophone Grand?

A. I did not state that they supplied a 56-inch horn.

XQ. 40. Did your company supply a 56-inch horn with the Graphophone Grand?

(Deposition of Eugene Henry Byrnes.)

A. It could be attached to a Graphophone Grand.

XQ. 41. Were these 56-inch horns made of brass?

A. Yes, sir.

XQ. 42. Were such horns shipped during the first couple of years of your employ with the American Graphophone Co.?

A. Yes, sir, to the best of my knowledge.

XQ. 43. Just what were your duties during the first year or two of your employment with the American Graphophone Co.?

A. Tool maker in the experimental laboratory.

XQ. 44. Where had you been employed just before going to the American Graphophone Co.?

A. Union Metallic Cartridge Co., Bridgeport, Conn.

XQ. 45. When were you employed by Hawthorne & Sheble or the Hawthorne & Sheble Co.?

A. Three years ago.

XQ. 46. Where? A. At Bridgeport.

XQ. 47. What were your duties with that concern?

A. Foreman of the tool-room.

XQ. 48. Do I understand that you were employed with the American Graphophone Co. from Dec., 1898, to the time you entered the employ of the Hawthorne & Sheble Co.? A. No, sir.

XQ. 49. How long did you continue in the employ of the American Graphophone Co.?

A. I do not recall the exact date.

XQ. 50. About how long? [572]

A. I have been out of their employ for 4 years, I believe that is about the time; I should say about 4 years, to the best of my memory.

(Deposition of Eugene Henry Byrnes.)

XQ. 51. About how many years did you remain with the American Graphophone Co. after you entered its employ in 1898?

A. About ten years.

XQ. 52. Are you acquainted with the so-called flower style of horn that has been sold on the market since 1905?

By Mr. HICKS.—Question objected to as arbitrarily fixing a date and amounting to testimony on behalf of complainant.

A. Slightly.

XQ. 53. Did not the Hawthorne & Sheble Mfg. Co. make such horns while you were connected with it?

A. They did.

XQ. 54. Was that horn made up of tapering panels joined together?

By Mr. HICKS.—Objected to as not proper cross-examination.

A. They were.

XQ. 55. Did you have anything to do with manufacturing flower horns while you were connected with the Hawthorne & Sheble Mfg. Co.?

By Mr. HICKS.—Objected to upon the ground that it does not appear that the witness was ever connected with the Hawthorne & Sheble Mfg. Co.

A. As a foreman of the tool-room I had charge of keeping their blanking tools repaired and frequently we had to sharpen them by grinding.

XQ. 56. Did you have charge of the sharpening or repairing of tools used by the Hawthorne & Sheble Co. in making those flower horns?

By Mr. HICKS.—Same objection.

(Deposition of Eugene Henry Byrnes.)

A. I have already stated that as foreman for the Hawthorne factory of their tool-room it was my place to keep their tools in perfect working order.

XQ. 57. And does this include the tools that were used for making the flower horns? A. Yes, sir.

XQ. 58. How long were you and your fellow workmen in Mr. McDonald's [573] back office when you saw the white metal horn concerning which you have testified on your direct examination?

A. I could not state the exact time in minutes. I should judge about two would be about what we could stay there.

XQ. 59. Why did you state on your direct examination that you could not examine the horn closely because of the possibility of Mr. McDonald's stepping into his back office?

A. Because he had a front office, a back office which was used for consultations, drawings, examinations of models, etc. There was a door leading from his back office into the laboratory proper.

XQ. 60. Did you and your fellow workman feel that you did not wish Mr. McDonald to see you examining his horn? A. We did.

XQ. 61. Why?

A. For the reason that we had no business in there at that time. I had been called into his front office and was passing through his back office into the laboratory. Noticing the horn being an unusual shape I remarked it to the so-called fellow-workman, Mr. Frank Osborne, and we opened the door and looked the horn over.

XQ. 62. Where was this white metal horn placed

(Deposition of Eugene Henry Byrnes.)

in the back office of Mr. McDonald's?

A. In the back office of Mr. McDonald.

XQ. 63. Was it on the floor or on his desk?

A. It was attached to a Graphophone Grand machine.

XQ. 64. Did you take it off the machine?

A. No, sir.

XQ. 65. Did you see any other style of horn on a Graphophone Grand at the Bridgeport factory of the American Graphophone Co. than the white metal horn you have referred and the 10-inch brass horns?

A. Yes, sir.

XQ. 66. What other kind of horn did you see on the Graphophone Grand at the Bridgeport factory?

A. I have seen most every style and shape of horn attached to the Graphophone Grand at different times during our expiriments to get quality of horn. [574]

XQ. 67. In answer to Q. 5 inquiring what horn or horns were used on the Graphophone Grand at the Bridgeport factory of your Co. you stated in substance that you knew they were putting out a 10-inch brass horn to start with and that later you saw a larger horn on a Graphophone Grand in Mr. McDonald's back office. How was it that in making that answer you referred only to the larger horn that was made of white metal and not to other and different forms of horns which you now say were tried on Graphophone Grands in the laboratory?

A. It was generally understood that the 10-inch brass horn was a part of the equipment for the Grand machine. Knowing that it looked out of proportion to the machine we also knew that they were about to

(Deposition of Eugene Henry Byrnes.)

have a larger horn. The first time that I saw a larger horn other than the 56-inch horn attached to a Grand machine was in Mr. McDonald's back office.

XQ. 68. What I want to know is why, in answering Q. 5, you referred only to this white metal horn and not other large horns that were used on the Graphophone Grand, such as the 56-inch brass horn that you later referred to?

By Mr. HICKS.—Question objected to as not in accordance with what the witness said.

A. Because we had, in our laboratory, a 56-inch brass horn to experiment with on any machine we saw fit at any time but when I saw this peculiar looking horn which was out of the ordinary it attracted my attention. That is why I spoke of it to my fellow-workmen so that they would have a look at the new horn for the Grand machine. We did not know that that was the horn that was to be used on the Grand machine. All that we did know was that it was attached to the machine. We supposed, knowing from Mr. McDonald that he was about to have a larger horn for the Grand, we naturally supposed that this was the new horn for the Grand machine.

XQ. 70. As a matter of fact were not the 56-inch brass horns used with the Graphophone Grand in considerable number? [575]

A. They could be; may have been.

XQ. 71. Hadn't you seen them used on the Graphophone Grand? A. Yes, sir.

XQ. 72. How did you know that it was the larger horn of white metal that Mr. Hicks wanted you to talk about this morning?

(Deposition of Eugene Henry Byrneš.)

A. I did not know that that was the particular horn.

XQ. 73. How did you know it was a peculiar horn that he wanted you to talk about rather than the 56-inch liorn?

A. Mr. Parker asked me if I remember anything in regard to the different horns used with the Grand machine.

XQ. 74. And what did you say in answer to Mr. Parker?

A. I answered him in this way: That they could use any horn that they saw fit. He says, "That is not the idea; I want to know what you saw on the machine at different times," and I laughed at him, saying that "You could use any horn on any machine so far as that was concerned"; so in our further talk he asked me if they did not use a 10-inch on it. I said, "Yes"; also a 56-inch horn. He asked me if I can bring to mind any other horn. I said, "Yes, there was a peculiar style horn that went out with the machine." He asked me if I could describe something with regard to the horn. Then I spoke to him about the remark to Mr. Osborne of the horn that was in Mr. McDonald's back room being a stubby, short affair and Mr. Osborne answered stating it looked like a lot of slats put together. That was the last I heard of Mr. Parker in regard to the horn except yesterday afternoon. He asked me if I would go to New York and state what I knew. I said yes.

XQ. 75. When did you first talk with Mr. Parker about horns used on the Graphophone Grand?

(Deposition of Eugene Henry Byrnes.)

A. Yesterday morning.

XQ. 76. And then yesterday afternoon he asked whether you would go to New York and give your testimony? A. Yes, sir.

XQ. 77. Can you state how the slats were fastened together in this white metal horn that you say you saw in Mr. McDonald's back office? [576]

A. No, I cannot.

XQ. 78. Can you state what the shape of the white metal horn you saw in Mr. McDonald's back office was?

A. Kindly make this question a little plainer.

XQ. 79. Describe the appearance of the bell end of the white metal horn as fully as you can.

A. I have a sketch here which shows it, to the best of my memory. (Witness refers to the sketch.)

XQ. 80. Your recollection was that the bell end of the horn was circular?

A. You mean that the horn was round?

XQ. 81. The bell end; did it form a true circle?

A. I cannot remember as to that.

XQ. 82. Was the bell end of the horn scalloped like some of the flower horns that have been put upon the market in recent years?

A. I do remember that point.

XQ. 83. Was the horn or any part of it finished with any lacquer or paint or decoration?

A. No, a plain white horn.

XQ. 84. How was the flaring or bell portion of the horn connected to the straight or conical portion?

A. I do not recollect.

(Deposition of Eugene Henry Byrnes.)

XQ. 85. Was there any solder used about this horn? A. I do not know.

XQ. 86. Were any of the parts brazed together in this horn? A. I do not know.

XQ. 87. Have you any distinct recollection as to the number of slats?

A. I have already stated that I did not remember the exact number but judge about 12 or 14.

XQ. 88. State what your recollection is as to the diameter of the bell.

A. To the best of my recollection, it may range from a foot and a half to two and a half feet.

XQ. 89. Did you personally have anything to do with the shipment of other horns that you think were similar to this one that you saw in Mr. McDonald's back office? A. No, sir. [577]

XQ. 90. Did you observe any of the other horns that you say you saw in the shipping-room closely enough to know how the bell portion was joined to the conical portion? A. No.

XQ. 91. Or how the slats were joined together?

A. No.

XQ. 92. Do you know whether these horns that you saw in the shipping-room were of different sizes?

A. They were of different sizes; I know that they were shipping different sized horns from time to time.

XQ. 93. No, I am referring to horns that you say you first saw in the shipping-room, that are similar to the white metal horn that you saw in Mr. McDonald's back room. Please state whether your under-

(Deposition of Eugene Henry Byrnes.)

standing is that these similar horns that you saw in the shipping-room were of different sizes.

A. To the best of my memory they appeared of the same size as the horn of which I spoke, in Mr. McDonald's back room.

XQ. 94. How do you fix the time when you saw the white metal horn in Mr. McDonald's back office as February or March of 1899?

A. Because it was shortly after I started to work for the American Graphophone Co.

XQ. 95. Did you cut off the end of the horn that you say they used with the Higham-o-phone some 4 or 5 years later than you saw the white metal horn in Mr. McDonald's office? A. Yes, sir.

XQ. 96. Who gave you the horn the end of which you cut off at that time?

A. It was in the room where Mr. Higham was experimenting with the Higham-o-phone.

XQ. 97. Did he ask you to cut off the tapering end?

A. No, sir. I wanted another horn and picked up this horn and cut the end off. After I had done so he seemed to be sorry that I had cut that horn up.

XQ. 98. Was the horn that you cut up at the time referred to decorated in any way?

A. Not that I remember. [578]

XQ. 99. Or how many panels or slats was that horn made?

A. As near as I can remember, 12 to 14.

XQ. 100. Did the horn you used with the Higham-o-phone have a flaring bell portion that was attached to a conical top?

(Deposition of Eugene Henry Byrnes.)

A. The question is not clear in my mind.

XQ. 101. How much of this horn did you cut off?

A. I should judge two or three inches.

XQ. 102. What was the shape of the part that you cut off? A. It was conical shape.

XQ. 103. How much longer than the two inches did this conical shape continue in this horn?

A. I should judge about six (6) inches.

XQ. 104. From that point to the bell of the horn what was the shape?

A. Increasing in diameter to the large end of the horn.

XQ. 105. Was the outer contour of the horn from the 8-inch point to the end of the bell curved or straight? A. Curved.

XQ. 106. How was this curved portion attached to the conical portion? A. I do not remember.

XQ. 107. Was the curved portion made up of one or more slats or panels? A. It was.

XQ. 108. How were these slats or panels connected with each other? A. I do not know.

XQ. 109. At what point on this horn used with the Higham-o-phone, did you find splitting of the metal?

A. On the small end.

XQ. 110. Was there any solder used on the horn that you experimented with with the Higham-o-phone? A. Not that I know of.

XQ. 111. How do you fix the date of the use of this horn on the Higham-o-phone?

A. I have not given any date; I have stated several years after seeing this white metal horn in Mr.

(Deposition of Eugene Henry Byrnes.)

McDonald's back room.

XQ. 112. Have you any clear idea of the number of years that elapsed after you entered the employ of the American Graphophone Co. before [579] you experimented with the horn on the Higham-o-phone?

A. No, it may be anywhere between four and six years.

XQ. 113. Did the edges of the slats overlap each other in the white metal horn you saw in Mr. McDonald's room? A. I do not remember.

XQ. 114. For how long a period after you saw this white metal horn in Mr. McDonald's room do you think you saw similar horns in the shipping-room?

A. About two months.

XQ. 115. What leads you to think that it was about two months that you saw similar horns in the shipping-room?

A. I can remember seeing them packing them; and, to the best of my belief and memory, it would be about two months.

XQ. 116. Didn't you remain in the laboratory for more than two months after you saw this white metal horn? A. Yes, sir.

XQ. 117. How long did you continue in the laboratory? A. About nine years.

XQ. 118. How long did the shipping-room remain in the location you have already described, adjoining the laboratory?

A. The shipping-room remained in the same location and is there now. The laboratory changed its

(Deposition of Eugene Henry Byrnes.)

location to the east building about one year after seeing this particular horn in Mr. McDonald's rear office.

XQ. 119. Why is it that you apparently think that the horn similar to this metal horn was seen by you in the shipping-room only for about two months instead of the year that the laboratory remained annexed to the shipping-room?

A. As workmen passing through another department than our own we did not spend much time in other departments. Therefore, after noticing that they were shipping horns that appeared to be duplicates of a horn seen in Mr. McDonald's rear office we simply lost interest and passed through the department as quickly as possible.

XQ. 120. Didn't you and your fellow-workman, Mr. Osborne, take enough interest in this white metal horn to examine some of the [580] similar horns that you say you saw in the shipping-room to see how they were constructed? A. No, sir.

XQ. 121. Your interest in the construction of this white metal horn ceased, did it, after you had made about two minutes' examination of the horn in Mr. McDonald's back office?

A. Yes, because as they were being shipped we would give them a passing glance. We had no chance to handle or cut them apart to see how they were manufactured.

Cross-examination closed.

Redirect Examination by Mr. HICKS.

RDQ. 122. Was Mr. Horace Sheble ever connected

(Deposition of Eugene Henry Byrnes.)

with the Hawthorne factory at Bridgeport, Conn., where you were employed?

A. Not to my knowledge.

RDQ. 123. The concern by which you were employed at Bridgeport, Conn., was the Hawthorne Mfg. Co., was it not?

A. It was. That is my mistake in saying Hawthorne & Sheble. We have always known them as Hawthorne & Sheble.

RDQ. 124. Is Mr. McDonald, in whose rear office you saw the white metal or aluminum horn in February or March, 1899, still living? A. No, sir.

RDQ. 125. When did he die?

A. About two or three years ago.

RDQ. 126. Who was the inventor of the Graphophone Grand machine?

By Mr. DUNCAN.—Objected to as calling for hearsay unless the witness has personal knowledge.

A. It is generally known that Mr. McDonald was the inventor of the Graphophone Grand; I personally do know that he improved the machine and, being in the laboratory, I was working on the Graphophone Grand improvements from time to time.

Redirect examination closed.

Deposition closed.

Signature waived.

Adjourned to 3 P. M.

RECESS. [581]

[Deposition of **Ellsworth A. Hawthorne**, for
Defendant.]

Oct. 11, 1913.

ELLSWORTH A. HAWTHORNE, a witness on behalf of defendant, being duly sworn, resumes the stand and testifies as follows:

Direct Examination by Mr. HICKS.

Q. 362. Please refer to plaintiff's exhibit for identification, p. 7 of the Talking Machine World for March 15, 1905, setting forth an advertisement of Hawthorne & Sheble Mfg. Co. and state what kind of horn was the horn numbered "F 0 3024."

A. "F 0 3024" was a flower horn 30 inches long with 24-inch opening or bell with silk finish on outside, inside hand decorated.

Q. 363. Does the advertisement before you show the shape or construction of the horn "F 0 3024"?

A. It does. The cut illustrating the horn attached to the phonograph illustrates the type of flower horn referred to.

Q. 364. For what machine was the horn "F 0 3024" made and sold by Hawthorne & Sheble Mfg. Co.?

A. For use on an Edison phonograph and similar types of cylinder machines.

Q. 365. Please refer to the same advertisement on p. 7 of the Talking Machine World for March 15, 1905, and state what was the horn numbered "F 0 2824."

A. "F 0 2824" was a flower horn for Victor tapering-arm machine, 28 inches long and with opening or bell 24 inches in diameter.

(Deposition of Ellsworth A. Hawthorne.)

Q. 366. Is the shape or construction of the horn "F 0 2824" shown in that advertisement?

A. The horn shown in the advertisement is very much the same, practically identical, except that the smaller end had a larger opening for the purpose of equipping the horns on the divers types of horn machine with tapering arms.

Q. 367. Please refer to plaintiff's exhibits for identification, which are p. 18 of the Talking Machine World for January 15, 1905, which was the first issue of that publication, as testified to by [582] you, and p. 4 of the Talking Machine World for February 15, 1905, and observe that reference is there made to catalogue No. 600 of Hawthorne & Sheble Mfg. Co. Please state whether the catalogue of the Hawthorne & Sheble Mfg. Co., bearing the No. "600," which you have produced and which has been offered in evidence, is the catalogue referred to in the two issues named of the Talking Machine World. A. It is.

Q. 368. Please refer to p. 4 of Hawthorne & Sheble Mfg. Co. catalogue No. 600 and to the back of that page, which bears the same page number, and state what was the horn "No. F 0 3024."

A. Flower horn for cylinder machine, 30 inches long with opening or bell 24 inches in diameter, silk finished.

Q. 369. Is the shape and construction of that horn illustrated on those pages numbered 4 and 4?

A. It is. It is shown on the first portion of p. 4.

Q. 370. Please refer to page numbered 5 of that

(Deposition of Ellsworth A. Hawthorne.)

catalogue and to the back of that page, which also is numbered 5, and state what was the horn numbered "No. F 0 2824."

A. "F 0 2824" is a flower horn for Victor tapering-arm machine, with silk finish, 28 inches in length and with opening or bell 24 inches in diameter.

Q. 371. Are the shape and construction of that horn illustrated on those pages numbered 5 and 5?

A. It is. It is shown in the cut.

Q. 372. Does that cut explain and show what you meant when you described the shape and construction of the horn numbered "F 0 2824" as set forth in the Talking Machine World, p. 7, for March 15, 1905? A. The same.

Q. 373. Pages 15, 16, 19 and 20, which you produced at the last session when you testified set forth, under the heading "Silk Finished Horns as follows":

"0 2824 flower \$6.00"

"0 3024 flower \$6.00" [583]

Please state whether p. 7 of the Talking Machine World for March 15, 1905, and pages 4 and 5 of the catalogue No. 600 refer to the same or to different horns referred to as set forth above on p. 20 of the four pages which you produced. A. The same.

Q. 374. Have you produced the remaining pages from which said pages 15, 16, 19 and 20 were taken and concerning which plaintiff's counsel cross-examined you to such an extent at the last session because you had not the forethought to apprehend the length of his cross-examination?

(Deposition of Ellsworth A. Hawthorne.)

A. I have. The front page is missing. However, I think these pages represent a portion of our price-list, published some time in 1905 or 1906.

Q. 375. From page 4 it appears that flower horn "F 0 3024" has a list-price of \$10.00; a price to the dealer of \$4.00 and a price to the jobber of \$3.50, these prices being printed. Above these prices is typewritten \$3.00. What does the typewritten price mean?

A. A special price to our distributors.

Q. 367. The same prices and the same typewritten price of \$3.00 appear on p. 5 with reference to the flower horn for Victor machine, numbered "F 0 2824." Does the same explanation apply?

A. The same explanation holds good.

Q. 377. Do these prices for the horns mentioned indicate anything with regard to the manufacture of such horns by Hawthorne & Sheble?

A. When the flower horn was first introduced by Hawthorne & Sheble Mfg. Co., made with scalloped edges, I do not now refer to glass horns with scalloped edges and also to the flower horns without the scalloped edges, we were laboring under great difficulty in their manufacture because the work had to be done by manual labor, by hand. The apparent large discount on the horns as indicated by the net quotation of \$3.00 shows a discount of 70 per cent. and this was due to our having perfected tools, blanking dies, special machines, spinning lathes, fixtures that enabled us to cut the costs [584] materially. According to my recollection we still had an inside

(Deposition of Ellsworth A. Hawthorne.)

price over the \$3.00. The typewritten figures or apparently typewritten figures were printed in the catalogue in imitation of typewriting. It is customary when reducing prices to the jobber or dealer or on increasing their discounts to allow the list prices to remain the same. This allows a wider margin of profit to both the dealer and the jobber; and the manufacturer, by improved methods and output, is enabled to also benefit by his efficiency.

By Mr. HICKS.—The pages of the price-list produced by the witness, Nos. 3-14, inclusive, and Nos. 17 and 18, are offered in evidence and marked "Defendant's Exhibit, pages of list prices, of Hawthorne & Sheble Mfg. Co., supplementary to pages 15, 16, 19 and 20, Frank Z. Demarest, Examiner."

Q. 378. Please look at the letter of Hawthorne & Sheble Mfg. Co., dated April 15th, 1904, set forth after the answer of Mr. William J. Elwell to Q. 15 of his deposition in this suit and state, after reading the same whether the reading of that letter refreshes your recollection.

A. It does. The letter is one that was issued by Hawthorne & Sheble Mfg. Co. and signed by Mr. Horace Sheble, who was the vice-president and treasurer of the Hawthorne & Sheble Mfg. Co. The letter has reference to flower horns with silk finish and indicates that they were made of long steel sections joined together and tapering throughout their length like the petals of a flower. When the Hawthorne & Sheble Mfg. Co. made an effort to place metal flower horns on the market with

(Deposition of Ellsworth A. Hawthorne.)

circular bells and with sections that were scalloped they had great difficulty in getting them down to a low cost owing to their making them by hand or by manual labor. It was about the time that this circular was issued that our special tools, fixtures and machines were completed, by the aid of which we were able to place the flower horn with or without scalloped edges on the market at reasonable prices.

We made flower horns for a long period preceding the completion of such tools and fixtures. It has always been my impression that [585] we made the steel flower horn with scalloped edges in 1903. Of course, we made the glass horn in imitation of flowers a considerable time preceding. The circular states that for over a year previous to April 15th, 1904, we were engaged in working on new model horns and also states that the new horns will be known as "the flower silk finish horns." The letter or circular would seem to attest to the correctness of my impressions that we had made such horns for at least a year previous to April 15, 1904.

By Mr. DUNCAN.—The answer of the witness is objected to as secondary so far as it attempts to characterize the statements of the circular letter, which are in themselves the best evidence and the balance of the answer is objected to as argumentative and based upon the letter and not upon the witness's own knowledge.

Q. 379. In answer to the last question you said that the letter of April 15th, 1904, refreshed your

(Deposition of Ellsworth A. Hawthorne.)

recollection. Please state now, whether, having refreshed your recollection from a reading of the letter, you have an independent recollection of the facts stated in your answer to the last question.

A. I positively have because we made flower horns with tapering sections and longitudinal seams and circular bell for the Graphophone Grand several years previous. I am referring now to making the horns in practical, mechanical, profitable condition out of the steel; aluminum is not a practical metal for a phonograph horn.

Q. 380. The letter of April 15, 1904, refers to "No. 0 3024 flower horn, length 30 inches, width of bell, 24 inches" for cylinder machines and to "No. O 2824 flower horn, length 28 inches, width of bell 24 inches for Victor tapering-arm machines." Please state whether these two flower horns were the same as or different from the flower horns having the same numbers, concerning which you have been questioned to-day. A. The same.

Q. 381. Does the Hawthorne & Sheble *Mfg. catalogue* No. 600 show the construction of the horns mentioned in the letter of April 15, 1904, as "No. 0 3024 flower horn" and No. O 2824 flower horn?" [586]

A. It does.

Q. 382. Please refer to the place in that catalogue where No. "0 3024, flower horn" of the letter of April 15, 1904, is shown.

A. On the back section of p. 4.

Q. 383. And is there a cut in the catalogue illus-

(Deposition of Ellsworth A. Hawthorne.)

trating the shape and construction of that horn?

A. There is on the front of page 4.

Q. 384. I put the same questions to you with respect to the horn designated in the letter of April 15th, 1904, as "No. 0 2824 flower horn."

Q. The No. "0 2824" is shown on the back of p. 5 and an illustration is shown on the front of the same page.

Direct examination closed.

Cross-examination by Mr. DUNCAN.

XQ. 385. What was your custom about getting out catalogues or price-lists? Did you get them out annually?

A. They appeared at different periods, not annually. It was according to the requirements of trade conditions, the same as I issue similar catalogues in my present line of metal manufacturing.

XQ. 386. When, according to your best information or judgment, was catalogue 600 issued?

A. I cannot state the exact date, but probably in 1904.

XQ. 387. When, according to your best information, was the price-list issued, certain pages of which have been produced and put in evidence?

A. Possibly, 1905; possibly later. In many instances when we issued catalogues we frequently issued what were termed price "fliers" until we had introduced the goods, when we followed the fliers with printed pages bound together.

XQ. 388. Did the first page of this price-list, a number of the pages of which you have produced,

(Deposition of Ellsworth A. Hawthorne.)

show the period at which the price-list was printed?

A. From the style of the price-list I should judge it to be our old No. 50; possibly, it was 51, issued about 1905, possibly, [587] 1906. I think it did.

XQ. 389. Did not page 1 of the price-list, some of the pages of which you have produced, show that it was the price-list for the season, 1905-1906?

A. It may have done so.

XQ. 390. Don't you know that it did show that this price-list was for the season of 1905-1906?

A. When I requested my workman to see if he could furnish me with some information in regard to silk finished horns he said he thought he had some information and brought the pages to me, that I asked particular information about. I asked him at that time the date and he said, "It is a late date; do you wish to see the rest of the pages"? I said, "No, I am in a hurry to catch a train and I wish some information about silk finished horns." I stated that I was familiar in general with the pages and was not interested in looking at them.

XQ. 391. I still repeat my question whether you do not know that the first page of this price-list, some of the pages of which you have produced, that it was the price-list for the period of 1905-1906.

A. My workman told me that it was printed with the date.

XQ. 392. At that date? A. He did not say so.

XQ. 393. Do you not yourself know that the first page of this price-list shows that it was for the season of 1905-1906?

(Deposition of Ellsworth A. Hawthorne.)

A. I have seen a similar price-list which was printed in 1905-1906. I do not recollect the particular pages of the particular catalogue and my particularly having seen the pages that belong to this particular and identical catalogue, but I have seen what I believe to be an exact copy of it and it was so printed.

XQ. 394. Where and when did you see what you believe to be an exact copy of this price-list which you have produced certain pages?

A. I should presume possibly a month ago.

XQ. 395. Where did you see it?

A. At my home.

XQ. 396. Do you admit that the price-list, some of the pages of which [588] you have produced was "for the season of 1905-1906"?

A. The date printed on same would so indicate, and I so believe.

By Mr. HICKS.—If plaintiff's counsel has a complete copy of the price-list about which he is inquiring, he is requested to produce the same since defendant's counsel will be glad to have a complete price-list in order that there may be no question in regard to the completeness of the list.

XQ. 397. Prior to the issuance of this price-list, some of the pages of which you have produced, you had issued and distributed catalogue 600, had you?

A. We had.

XQ. 398. Did you also issue and distribute certain supplements to catalogue 600?

A. Whether we had issued price-lists other than

(Deposition of Ellsworth A. Hawthorne.)

the one of which I have produced several pages I am not positive. I think we did issue such fliers before issuing the bound price-lists.

By Mr. HICKS.—If plaintiff's counsel has any such documents he is requested to produce the same and show them to the witness. The witness is entitled to see such papers if plaintiff's counsel is in a position to exhibit them to him.

XQ. 399. Have you in your possession now or under your control the complete price-list that you say that you examined at your home some couple of months ago?

A. I am not positive that I have.

XQ. 400. What became of that?

A. I don't know.

XQ. 401. Have you now produced all of the catalogues and price-lists that you have under your control or in your possession, relating to horns made by Hawthorne & Sheble or the Hawthorne & Sheble Mfg. Co.?

A. That I cannot say because I am making searches constantly and come across these catalogues in my searches.

XQ. 402. What was the date at which your company issued the catalogue that was offered in evidence by the defendant and which shows, on the back cover, the 9ft. horn with the workman standing beside it?

A. I have previously testified that this was issued in the latter part of 1900 or the early part of 1901.

(Deposition of Ellsworth A. Hawthorne.)

By Mr. HICKS.—This line of cross-examination is objected to upon the ground that it has no bearing whatever upon the direct examination for which the witness has been recalled, the cross-examination upon the other matter having been concluded and reiterated.

XQ. 403. Did all of the price-lists, issued by your company, of the kind shown in the pages that you have produced, 2-20, inclusive have the typewritten or imitation typewritten figures on them as shown in these pages you have produced? A. Not all.

XQ. 404. Which of these typewritten lists had these special prices on them in typewriting or imitation typewriting?

By Mr. HICKS.—Objected to as immaterial and irrelevant.

A. No specified lists. It was a matter of our judgment at the time of issuing a certain price-list. Some did and some did not bear such additional quotations. Some we wrote in in such figures in pen and ink.

XQ. 405. Are the statements in your circular letter of April 15, 1904, true?

A. The general statements can be taken as absolute fact as I have previously testified that the silk finish horn was a horn with a handsome finish and while much was claimed for it as a reproducing horn still I never pinned much strength to that feature, but the horn certainly would sell on appearance; and the letter calls particular attention to the silk finish as being universally accepted as a fine

(Deposition of Ellsworth A. Hawthorne.)

finish and as having a standard of merit.

XQ. 406. Please examine the circular letter carefully and point out any statement therein as to the correctness of which you have any question.

A. The last paragraph relating to the gold strips and the decorations is a matter of taste. The statement can be viewed as being correct, and I state that it undoubtedly is correct but for my taste and my own view-point, I do not particularly care for a morning-glory horn such as described, as my taste is quiet and not flashy. [590] I always considered the flower type of horn as appealing to that portion of the purchasing public, who like flashy devices.

XQ. 407. Have you now pointed out all the statements in the circular letter of April 15, 1904 as to the correctness of which you have any question?

A. I did not raise any question about the correctness of any statement. I make comparisons with individualistic ideas or tastes.

XQ. 408. Are there any statements in the circular letter referred to that are incorrect?

A. None that I can discover.

XQ. 409. Have you carefully read the letter in question? A. I have.

XQ. 410. You applied your so-called silk finish, did you not, to other horns than those of the flower type. A. We did.

XQ. 411. In connection with such other horns you stated to the public did you not, that "we recommend silk finish horns as being the best horns

(Deposition of Ellsworth A. Hawthorne.)

to use in reproducing; counter-vibration is eliminated and clear brilliant tones produced''?

A. We so advertised them.

XQ. 412. Was that statement truthful?

A. When a horn was made with seams or fastened together with solder, there was a possibility of these seams being incorrectly formed or fastened together insecurely and by placing the silk finish on the horn it undoubtedly did improve the quality of horns that were so constructed; that is to say, with loose seams or in instances of carelessness. I have previously stated from my own view-point, I never could see any difference between the reproduction of a silk finished horn and a correctly made horn of other types. However, that again was my individualistic idea. Undoubtedly others would hardly agree; but my invariable test was to use the ear to determine the quality of reproduction. If an individual was allowed to use his eyes and his ears he would or they would almost invariably see some improvement or perfection in the reproduction from a horn of a type for which they had a liking. Once turn their back to the machine, it was amusing to see the varieties of opinion when the eye did not assist in the decision. [591]

XQ. 413 Did you use any letter or symbol to distinguish the flower horns from the other type of horns in your catalogues? I mean in conjunction with the numbers of the horns.

A I do not think. we did. In fact, I am quite sure we did not when we first manufactured the flower

(Deposition of Ellsworth A. Hawthorne.)

horns. The first metal flower horns placed by us generally on the market, with scalloped bells and with circular bells made of steel, enameled or painted or decorated were sold without literature of any kind until we developed a market. This was as a rule our custom. I follow the same rule to-day. I have been offering a device, I am now manufacturing and have been working on it for over two years and it is only within the last four days that I have prepared and produced any printed matter whatever.

XQ. 414. Have you now answered my last question as fully as you are able to do?

A. We applied the letter "O" to silk finish; the "P" for painted, "E" for enameled; "F" for flower horn.

XQ. 415. When did you commence to apply the letter "F" to the numbers of your horns to indicate the flower style?

A. I cannot state the exact date as I do not know but in the circular of April 15, 1904, issued by Hawthorne & Sheble Mfg. Co., we referred to the flower horn as No. 0 3024, for cylinder machines and the flower horn as No. 0 2824 for Victor tapering-arm machines so that it might have been subsequent to that date that we applied the letter "F."

XQ. 416. In the price-list, certain pages of which you have produced, the letter "F" is regularly used to indicate the flower style of horn, is it not; and its presence indicates that the horn so designated is of the flower style and its absence that it is not of the flower style? Is that correct?

(Deposition of Ellsworth A. Hawthorne.)

A. There are many horns indicated in the price-list referred to for both cylinder and Victor tapering arm types of machines that are [592] indicated by the letter "F" for the flower horn preceding the numerals indicating the size of the horn. On p. 6, however, there are horns mentioned for Victor tapering-arm machines that are not preceded with the letter "F" although preceding these numbers is a mention of flower horns. These horns are indicated by the letter "J," "K," "L" and were for certain types of Victor talking machine. My impression is that these were flower horns. I so connect them because they are in the list or immediately following the list of flower horns and are preceded by remarks about flower horns. It was generally our custom to indicate some other type with a distinguishing letter or numeral.

XQ. 417. What was it that took so much time in the perfection of the machinery to make your flower horns that you illustrated and described in your catalogue 600?

A. A curved grooving machine, power operated; I recollect we were working for months, I believe over 12 months, on this particular device and after we had completed it we were so elated we tried to obtain a patent on it. I visited the factory of Peckstow & Wilcox Co., in Connecticut and tried to interest them in the machine. I do not think we ever applied for a patent on the device because our patent attorney, after investigating told us that he thought it would be a waste of time, money

(Deposition of Ellsworth A. Hawthorne.)

and energy. In addition to the grooving machine we also made a special beading machine which took several months to develop. These machines were a matter of gradual development and had to be worked up little by little to perfection. I have previously stated that the cost of making the machines by hand was excessive.

XQ. 418. When was it that you perfected the curved grooving machine?

A. My impression is that it was in 1904.

XQ. 419. And when did you start working on the development of the curved grooving machine?

A. That I could not state; I have no means of connecting up the exact [593] date.

XQ. 420. Approximately when did you start the development of the curved grooving machine?

A. I believe in 1903.

XQ. 421. How long do you think you were working on this curved grooving machine?

A. Several months.

XQ. 422. When did you perfect the beading machine?

A. That came after the groover. I do not recollect the exact date.

XQ. 423. When do you think you started work on the special beading machine?

A. Probably 1904 as it was subsequent to our working on the grooving machine. The edging of horn sections could be done fairly well by hand although a slow process.

XQ. 424. Please compare the circular or pamph-

(Deposition of Ellsworth A. Hawthorne.)

let that I now show you with pp. 3-20, inclusive, of the price-list produced by you and state whether this pamphlet is a complete copy of your price-list of which you have produced pp. 3-20.

By Mr. HICKS.—Defendant's counsel objected to the tardiness of plaintiff's counsel in producing this circular or price-list. It is unfair to the witness and in good faith should have been exhibited to him before. A motion is now made to strike out the cross-examination of the witness with regard to this price-list for the reason that the price-list was not exhibited to the witness, the witness being entitled to see any written instrument which it is contented contradicts his testimony.

A. The confidential trade price-list handed to me by complainant's counsel appears to be of the same issue as the portion of price-list referred to. This particular "confidential trade price-list" states "the quotations made in this list are on goods enumerated in our catalogue No. 600 and supplements thereto." This bears out my previous statement that we issued statements and different price-lists from time to time. Consequently I am not prepared to state that this was the first and only price-list issued by Hawthorne & Sheble Mfg. Co. in relation to or in connection with catalogue No. 600.

[594]

XQ. 425. Please state whether the price-list shown you in connection with the last question was a price-list issued by the Hawthorne & Sheble Mfg. Co. for the season, 1905-1906. A. It was.

(Deposition of Ellsworth A. Hawthorne.)

By Mr. DUNCAN.—Complainant's counsel asks that the price-list in question be marked for identification as "Complainant's Exhibit for Identification, Hawthorne & Sheble Price-list, Season 1905-1906.

XQ. 426. When was this price-list gotten up and issued?

By Mr. HICKS.—Objected to as immaterial and irrelevant. It is not seen that the cross-examination upon such matters has any bearing whatever upon any material question in this suit.

A. This price-list was probably printed in some part of 1905, possibly, the latter portion. The advertisement appearing in the Talking Machine World to catalogue 600 as early as January 15, 1905, which would indicate that we printed the catalogue No. 600 a considerable period preceding the issuance of price-list, No. 50.

XQ. 427. Can you state any supplements to catalogue 600 you issued prior to the price-list No. 50?

By Mr. HICKS.—Objected to as immaterial and irrelevant.

A. I can hardly tell. The method we adopted was to print pages from time to time of new devices and then add them to our existing catalogue by fastening with staples and while we might start a catalogue such as No. 600 with four pages eventually it might grow to twenty-four and bear the same catalogue number.

XQ. 428. Did your company issue any catalogue that illustrated or described phonograph horns be-

(Deposition of Ellsworth A. Hawthorne.)

tween the catalogue on the back cover of which is the reproduction of a 9-ft. horn with a workman standing beside it and catalogue 600.

A. I do not know. We may have done so.

XQ. 429. What is your best recollection as to the issuance of any catalogue of your company between these two?

A. I have no distinct recollection because when I found the catalogue showing the cut with the man standing alongside the large [595] horn I had practically forgotten its existence. As an evidence of that fact, will state that when I told my wife that I wanted her to go hunt for a photograph that I had of a man alongside of a large horn, I was under the impression that we had made a cut and illustrated it in our catalogue and I wished particularly for a photograph and when this particular catalogue was found, I was quite a little surprised, indicating that we issued many leaflets, supplements, catalogues from time to time.

XQ. 430. Do you think that your company issued no catalogue or illustrated horns between the date of the catalogue showing the 9-ft. horn with the workman on the rear cover and catalogue 600?

A. I am not prepared to state either way; I don't know.

XQ. 431. It is a fact, is it not, that in the early part of 1904, you endeavored to get a patent or patents on the new shape of horns you were then putting out?

A. We underwent a similar experience at that

(Deposition of Ellsworth A. Hawthorne.)

time with our ideas in regard to obtaining patents on certain types of horns, and Mr. Sheble so mentions them in his letter of April 15th, 1904, or at least he makes an inference thereto. We consulted with our attorneys in this respect and he advised us that he did not think that we could obtain patents on the horns referred to although I believe we had applied for a patent on our "Clover horn"; I am not positive about this, and Mr. Sheble in his reference in his letter refers to what we expected to do because I recollect the circumstance distinctly.

XQ. 432. It was a fact, however, was it not, that in April, 1904, you had on the way patents to cover the new shapes "which we are adding to our line"?

By Mr. HICKS.—Objected to as immaterial.

A. I have stated that we consulted with our patent attorneys in this connection and contemplated making such application; possibly, [596] some applications were made.

XQ. 433. Who was the inventor whose applications for these new shapes of horns were filed?

By Mr. HICKS.—Same objection.

A. In most instances applications were made in the name of Hawthorne & Sheble and it is possible that they would have been made or if made, were made in Mr. Sheble's name.

XQ. 434. I do not wish for your surmise but I wish for your knowledge as to the names of the inventor or inventors who applied for patents to cover the new shapes of horns that you were adding to your line in April, 1904.

(Deposition of Ellsworth A. Hawthorne.)

A. I have no recollection of any one other than Mr. Sheble.

XQ. 435. Did Mr. Sheble apply for a patent on a new shape or new shapes of horns that you were adding to your line in April, 1904?

A. I do not know that he applied for any patents on horns or new horns in April, 1904.

XQ. 436. That was not my question. I ask whether Mr. Sheble applied for any patent to cover new shapes of horns which you were adding to your line in April, 1904.

A. If he did not apply, and I believe he did, it was due to discouragement on the part of our patent attorneys.

XQ. 436. Did you apply for any patent on the shape of a horn during the year 1903, or 1904?

A. I have no recollection of having done so.

XQ. 437. Are you positive that you did not?

A. I do not think I did.

XQ. 438. Who applied for the patent on the clover shape of horn?

A. If a patent was applied for it was probably done by Mr. Sheble.

XQ. 439. Who were the attorneys that you consulted in regard to patenting the new shapes of horns that you were adding to your line in 1904?

A. Howson & Howson. Mr. Harry Smith was the patent attorney employed by Howson & Howson, who advised us. [597]

XQ. 440. You have reason, have you, to doubt the truthfulness of the statement in Mr. Sheble's letter

(Deposition of Ellsworth A. Hawthorne.)
of April 15, 1904, reading as follows:

“We have under way patents to cover the new shapes which we are adding to our line”?

By Mr. HICKS.—Objected to as immaterial.

A. I have no reason to doubt it.

XQ. 441. Did you ever obtain any patents on the new shapes that you were adding to your line in April, 1904? A. We may have done so.

XQ. 442. Please state the numbers of any of such patents that you obtained.

A. I don't know of any by number. I would have to search back in the history of the company. I sold a large number of patents to the Columbia Phonograph Co. or the American Graphophone Co., some twenty, it may have been forty, at one time and among the number were the patent on horn cranes, silk finish horn, etc.

XQ. 443. Were there any patents in this number relating to the shape of the horn?

A. I do not recollect.

XQ. 444. If you applied for any patents on the shape of the horn that you were adding to your line in April, 1904, and on which applications no patents issued, will you authorize Howson & Howson to allow complainant's counsel to examine such applications?

By Mr. HICKS.—Objected to as not asking for a fact, also it not appearing that the witness would have the authority to give such authorization; also as speculative and a fishing expedition.

A. I have no authority to grant you the right to examine Howson & Howson's records but I have no

(Deposition of Ellsworth A. Hawthorne.)

doubt that probably these gentlemen would be glad to confirm my statements.

XQ. 445. So far as you have any authority will you authorize Howson & Howson to show complainant's counsel any application files they may have relating to applications for patents on shapes of phonograph horns that you were adding to your line in April, 1904? [598]

A. I shall be very glad to do so and will assist you if it will please you.

XQ. 446. I understand you to remark, off the record, a few moments ago, that you thought you could obtain from your office records the numbers and dates of applications for letters patent on phonograph horns, that were filed on behalf of the Hawthorne & Sheble Co.; is that correct?

A. I did not say so. I said that if I could get my office on the 'phone I might get information.

XQ. 447. Will you consult your office force or office records and let complainant's counsel know the number or numbers and dates of applications filed on behalf of the Hawthorne & Sheble Mfg. Co. or its officers on forms of phonograph horns during the year 1904?

By Mr. HICKS.—Objected to as immaterial, irrelevant and a waste of time.

A. I shall be pleased to.

XQ. 448. And will you also give permission to Howson & Howson to give complainant's counsel access to any records that firm may have, relating to such applications?

(Deposition of Ellsworth A. Hawthorne.)

A. I would have no objection to having Howson & Howson show complainant's counsel, by proof, if they retain same, to indicate that an effort was made on the part of Mr. Sheble or the Hawthorne & Sheble Mfg. Co. to obtain patents.

Cross-examination closed.

Redirect Examination by Mr. HICKS.

RDQ. 449. Referring to the letter of April 15, 1904, please state the kind of seams employed to join together the sections of the horn designated No. 0 3024 flower horn for cylinder machines and No. 0 2824 flower horn for Victor Tapering Arm machines.

A. They were longitudinal seams. They may have been lap seam; they may have been made by the tin-smith's lock seam or they may have been soldered.
[599]

RDQ. 450. Complainant's counsel has produced a copy of the Hawthorne & Sheble Mfg. Co. catalogue No. 600. Have you compared the same with the copy of that catalogue which you produced?

A. I have.

RDQ. 451. And what do you find?

A. They seem to be identical.

RDQ. 452. What were the companies putting out cylinder machines and what were the companies putting out disc machines on April 15, 1904, and prior thereto, in this country?

A. National Phonograph Co. of Orange, N. J., and the American Graphophone Co. and Columbia Phonograph Co. of New York and Bridgeport were offer-

(Deposition of Ellsworth A. Hawthorne.)
ing cylinder machines. The Victor Talking Machine Company of Camden, New Jersey, were offering the disc machine.

Redirect examination closed.

Deposition closed.

Signature waived.

October 27, 1913.

Met pursuant to agreement.

Present: Counsel as before.

ELLSWORTH A. HAWTHORNE, a witness duly sworn on behalf of defendant, being recalled, testifies as follows:

Direct Examination by Mr. HICKS.

Q. 453. Please state whether you have made any further search for papers and documents relating to the manufacture of flower horns by the Hawthorne & Sheble Mfg. Co. A. I have.

Q. 454. Have you found any early illustration of those horns; and if so, please produce and describe the same.

A. I have. I found three pictures illustrating the type of flower horn manufactured by Hawthorne & Sheble Mfg. Co., that was made with the larger diameter more nearly a circle and without much indication of scallops, with which horns of the flower type were made of later date.

The picture marked "X 11" indicates one horn in the upper portion [600] which was made for the Edison phonograph. The picture of the flower horn in the lower portion of the picture indicates the type of horn made for the Victor Talking machine.

(Deposition of Ellsworth A. Hawthorne.)

Picture marked "X 12" indicates how nearly the horn was made in a circle at the larger diameter and also indicates how the horn was decorated on the interior.

Picture "X 13" illustrates the flower horn on an Edison phonograph.

These illustrations above referred to were carried by me personally to demonstrate to customers the appearance of the horn.

These pictures were carried by me to show the trade flower horns made of steel, decorated, and were carried by me in the latter part of 1903 and the early parts of 1904.

I found them with printed matter dated 1903-1904.

Q. 455. Was there any particular trade for which you used the three photographs referred to in your last answer; that is to say, any trade for any particular season of any year?

By Mr. DUNCAN.—Objected to as leading.

A. The illustrations referred to were shown by me to the jobbing trade in the latter part of 1903 in an endeavor to secure orders for this type of horn for the Xmas trade of 1903.

Q. 456. Please state what importance, if any, the Xmas trade has been in the phonograph business.

A. In the early history of the phonograph business, at the time the phnograph was being offered as, a means of home entertainment, the bulk of the business was done during the Xmas holidays. In the year 1895 we sold as many phonographs for delivery

(Deposition of Ellsworth A. Hawthorne.)

in December as we had sold in the previous six months.

Q. 457. Please describe the seam by which the strips composing the horns shown in the 3 photographs just produced by you were joined together.

By Mr. DUNCAN.—Objected to on the ground that the exhibit is the best evidence. [601]

A. The sections of the horns were made from strips of metal wide at one end, narrow at the other, and tapering throughout their length. The seams were carried on the outer portions of the horn, soldered together, and striped with paint.

Q. 458. What success did the Hawthorne & Sheble Mfg. Co. have in manufacturing the flower horns shown in the photographs for the Xmas trade in 1903?

A. Poor success, due to the fact that the horns were made of steel. During the process of soldering the acid used spread over and impregnated certain portions of the metal. This caused discoloration. The horns were finished on the inside and outside with paint. We sent out a number of the horns to the trade and many were returned because the steel rusted or had been rusted before they were painted. The rust had not been thoroughly cleaned off or the fact that they had been rusty and then cleaned caused the paint to blister and come off. This ruined the appearance of the horns as they showed rusty spots over their surface. We were not very successful with horns under such conditions and from that period forward we devoted consider-

(Deposition of Ellsworth A. Hawthorne.)

able time to experiments. Later the horns were made of tin and this overcame our early troubles.

Q. 459. Please compare the horns shown in the three photographs just produced by you with the horns shown in Plaintiff's Exhibits, for identification, consisting of page 18 of the Talking Machine World for January 15, 1905, page 4 of the same publication for February 15, 1905, and page 7 of the same publication for March 15, 1905.

A. The horns appearing in the advertisements you refer to are flower horns with scalloped bells and are silk-finished horns. The stripes on the silk-finished horns were made by attaching gold paper to the ribs or seams. The horns shown in the illustrations "X 11," "X 12" and "X 13" were of the earlier type of flower horn. [602]

Q. 460. Are there any other differences between the horns referred to?

A. The horns shown in the advertisements in the Talking Machine World previously referred to by you were made after we had tools for their manufacture. The horns shown in illustrations X 11, X 12, X 13, were made by hand. The tool-made horns were more attractive and were made at infinitely less cost than the hand-made horns.

Q. 461. Are those all the differences between the horns referred to?

A. Outside of the better appearance of the horns appearing in the advertisements of the Talking Machine World and better decorations and the fact that the horns appearing in the advertisements of the

(Deposition of Ellsworth A. Hawthorne.)

Talking Machine World were provided with deeper scallops in the bell, they are practically the same.

Q. 462. Did you succeed in manufacturing a sufficient quantity of the horns shown in the three photographs X 11, X 12, and X 13 for the Xmas trade in 1903?

By Mr. DUNCAN.—Objected to as leading.

A. No. Owing to the difficulties in decorating and manufacturing.

By Mr. HICKS.—The three photographs produced by the witness are offered in evidence and marked respectively “Defendant’s Exhibit, Hawthorne & Sheble Mfg. Co. Photograph of Flower Horn for Xmas Trade of 1903, X 11, Frank Z. Demarest, Examiner”; “Defendant’s Exhibit, Hawthorne & Sheble Mfg. Co. Photograph of Flower Horn for Xmas Trade of 1903, X 12, Frank Z Demarest, Examiner”; and “Defendant’s Exhibit, Hawthorne & Sheble Mfg. Co. Photograph of Flower Horn for Xmas Trade of 1903, X 13, Frank Z Demarest, Examiner.”

By Mr. DUNCAN.—The exhibits just offered in evidence are objected to as insufficiently and improperly proven and the titles given the exhibits are objected to as misleading.

By Mr. HICKS.—As the objection seems to have no point defendant’s counsel is not notified by the objection of any proper ground.

Q. 463. On photograph X 11 two flower horns are shown. For what machines were those two flower horns intended?

(Deposition of Ellsworth A. Hawthorne.)

A. The upper one for an Edison phonograph or similar types of [603] machines such as the Graphophones. The lower one for the Victor Tapering Arm machine and similar types of machines.

Q. 464. On the backs of the photographs X 11 and X 12 the following appears: "1902 H. S." Do you know in whose handwriting those figures and letters are or how they came to be written on the backs of those two photographs? A. I do not.

Q. 465. Did you, in your search, find a copy of the circular letter of April 15, 1904, sent out by the Hawthorne & Sheble Mfg. Co., being the circular letter produced in the deposition of William J. Elwell, in this suit?

A. I found another copy of the circular dated April 15th, 1904, and signed by Mr. H. Sheble, in his own handwriting.

Q. 466. Referring to the circular letter of April 15, 1904, and the flower horns therein designated No. 0 3024 and No. 0 2824, please compare those flower horns of the letter with the flower horns shown in the photographs X 11, X 12 and X 13.

A. The flower horns referred to in the letter of April 15th, 1904, refer to these particular horns, shown in the illustrations marked X 11, X 12 and X 13. Hawthorne & Sheble Mfg. Company, however, did not commence to push the sale of flower horns generally with the trade until after they had designed fixtures and tools to enable them to manufacture at a less cost than those made entirely by hand.

(Deposition of Ellsworth A. Hawthorne.)

Q. 467. Referring to the tools made by the Hawthorne & Sheble Mfg. Co. before they began to push the sale of the flower horns in a general way, what sort of seam were those tools designed to make, if any?

A. The tools were designed to make horns with the tinsmith's lock seam. The first flower horns manufactured by Hawthorne & Sheble Mfg. Co. were made with soldered seams, and you'll note in circular of April 15th, 1904, that it refers specifically to flower silk-finished horns. We did not make the flower silk-finished horns until quite a long while after we started to manufacture flower horns made of steel and painted. [604]

Q. 468. When were the tools for making the tinsmith's or lock seam finished by the Hawthorne & Sheble Mfg. Co.?

A. The first tools were made in the early part of 1904, and you might say that the tools in a sense were never finished. Manufacturers, if they are up-to-date, are always making new tools, new improvements, adopting new methods. I recollect in 1906 we made a special tool for a portion of the work on the flower horn that we never thought could be made with tools. As long as we manufactured flower horns we were making tools. The first tools made were crude and later were discarded for better designed devices that again reduced cost.

Q. 469. What I would like to have you state is when did Hawthorne & Sheble Mfg. Co. first make the tinsmith's or lock seam and when by means of tools or

(Deposition of Ellsworth A. Hawthorne.)
machinery, as distinguished from the operation carried on in what you have styled "hand-made horns."

A. In the early part of 1904.

Q. 470. Referring to diagrams No. 1, 2, 3 and 4 annexed to your affidavit, which have been offered in evidence, did you draw those diagrams or make the writings thereon? A. No.

Q. 471. Those diagrams and the figures and writings thereon are in my handwriting, are they not?

A. I think they are.

Q. 472. When, in XQ. 220, plaintiff's counsel asked you whether the sketch marked "Diagram 4" was a correct reproduction of a sketch marked in your handwriting, "Diagram No. 3 and Diagram No. 4" did you observe that he attributed the handwriting to you when you answered the question?

A. I did not.

Q. 473. In your search recently made did you find any other papers which throw any light on the Hawthorne & Sheble catalogues?

A. Yes. With the illustrations Marked X 11, X 12 and X 13 I found two price-lists, one marked No. 40, dated 1903-1904, another marked No. 50, 1903-1904.

These two price-lists No. 40 and 50 refer to catalogue No. 500. [605] It was the custom of the Hawthorne & Sheble Mfg. Company to number their dealers' price-list No. 40, their distributors' and jobbers' price-list No. 50. I previously testified that some of these price-lists were prepared by pen-writ-

(Deposition of Ellsworth A. Hawthorne.)

ten special prices. The No. 50 would corroborate that assertion.

I also found a special circular on flower horns with descriptive matter and list prices; also a circular issued in June, 1904, calling attention to certain types of flower horns.

Q. 474. The circular letter of June, 1904, mentions the silk-finish flower horns 0 3024 and 0 2824, mentioned in the letter of April 15, 1904. It also mentions enameled flower horns No. 3024 E and No. 2824 E for cylinder and Victor Tapering Arm machines respectively. What difference, if any, existed between the enameled flower horns and the silk-finish flower horns?

A. The enameled flower horns were finished with an enamel; this was done by dipping the horn in a tub or vat containing the enamel and was a method employed by Hawthorne & Sheble Mfg. Company to reduce the cost of finish as compared to the more laborious and expensive process of painting the horns with a brush.

The silk-finished horns were covered with a special shellac or preparation to enable the Hawthorne Mfg. Company to secure the "silk finish" consisting of cloth to be permanently attached to the horn.

Q. 475. Did you find any record of any shipment of flower-silk horns by the Hawthorne & Sheble Mfg. Co. in the early part of 1904?

A. I found a letter dated May 25th, 1904, signed by Mr. H. Sheble, advising me of shipments being made of flower horns to various parties, "Stewart,

(Deposition of Ellsworth A. Hawthorne.)

Wellner, Beach and Matthews."

Q. 476. Did you find any letter enabling you to fix the date of publications of the catalogue of the Hawthorne & Sheble Mfg. Co., showing the large horn with a man standing beside it, on p. 11 and on the back cover thereof, referring to the catalogue that has been offered in evidence? [606]

A. I did. A letter written to me by my son Horace Hawthorne, dated March 17th, 1902, Germantown, Philadelphia, Pa., 955 East Cheltenham Ave. This was some time after Hawthorne & Sheble Mfg. Co. had given up their New York office at 297 Broadway, New York. After I closed the New York office I returned to Philadelphia and 955 East Cheltenham Ave., Germantown, was my Philadelphia residence.

Direct examination closed.

Cross-examination by Mr. DUNCAN.

XQ. 477. In whose handwriting are the figures X, 11, X 12 and X 13 appearing on the photographs that you produced this morning and that were offered in evidence? A. My own.

XQ. 478. And when were these figures placed on the photographs? A. About 10 days ago.

XQ. 479. In whose handwriting are the figures appearing in red ink as follows:

"X 1" on the letter from your son of March 17, 1902;

"X 2" on confidential price-list No. 40, 1903-1904;

"X 3" on confidential price-list No. 50, 1903-1904;

"X 5" on circular letter of April 15, 1904;

(Deposition of Ellsworth A. Hawthorne.)

“X 9” on the special circular relating to flower horns and appearing in pencil on Mr. Sheble’s letter to you of May 25th, 1904, “X 23” and on the circular letter of June, 1904, “X 15.”

A. My own.

XQ. 480. And is the annotation “X 35” appearing at the top of p. 1 of the confidential price-list No. 50, dated 1905–1906, also in your handwriting? A. It is.

XQ. 481. Were the annotations referred to in the two preceding questions made by you at the same time as those referred to in XQ. 477?

A. They were all made at the same time.

XQ. 482. When was the special flower horn circular that you marked “X 9” in red ink and that you referred to in your direct examination this morning circulated by Hawthorne & Sheble Mfg. Co.? A. I believe in the latter part of 1904.

XQ. 483. And when were the confidential price-lists No. 40 and 50 that you marked in red ink X2 and X3 respectively, issued and circulated [607] by your company? A. In 1903 and 1904.

XQ. 484. Who was Stewart that was referred to in Mr. Sheble’s letter to you of Mar. 25, 1904, that you produced this morning and which is marked “X. 23”?

A. I believe it was Frank Stewart, our salesman. I am not positive.

XQ. 485. And who was Wellner referred to in that letter?

A. I believe it was Julius Wellner of Philadelphia.

XQ. 486. What was his business at that time?

(Deposition of Ellsworth A. Hawthorne.)

A. Musical instruments, talking machines.

XQ. 487. Who was Beach referred to in that letter?

A. A I believe it was H. A. Beach of Bridgeport, Conn.

XQ. 488. What was his business at that time?

A. Talking machine, crockery ware, general store.

XQ. 489. And who was Matthews referred to in that letter?

A. Probably A. D. Matthews of Brooklyn, department store. Matthews and the parties referred to were some of the parties that I approached to sell flower horns to by means of the protographs and previously offered.

XQ. 490. Have you any personal recollection as to the shipment of flower horns to either Stewart, Wellner, or Matthews? A. Yes.

XQ. 491. What is your recollection in regard to the shipment of flower horns to Stewart? Where was that shipment to Stewart made?

A. I have no personal recollection of Stewart, but of Beach. I recollect that I tried to collect our account from Beach later on and that I could not do so. Wellner was continually floating in and out of our factory and I was selling him goods constantly. A. D. Matthews & Sons I personally solicited and arranged for a display of flower horns in their window.

XQ. 493. Were the horns referred to in this letter of May 25, 1904, shipped to Matthews for the purpose of window display that you have referred to? [608]

A. Not necessarily. We were shipping them

(Deposition of Ellsworth A. Hawthorne.)

flower horns and all types of horns continually. I particularly recollect Matthews because their buyer was one who called my attention to the facts that the rust on the steel of which the horn was constructed was spoiling the paint decorations.

A. Who was the decorator from whom you received the horns referred to in the letter of May 25, 1904?

A. I could not state positively. We employed several.

XQ. 494. When did you find the documents that you have produced this morning, numbered, in your handwriting, X1, 2, 3, etc., as stated in XQ. 477-480?

A. Sunday night, October 12.

XQ. 495. Did you also find a number of other documents that you numbered at that time but have not referred to on your direct examination this morning?

A. I did.

By Mr. HICKS.—Defendant's counsel presents to complainant's counsel for examination a number of other documents found by the witness which defendant's counsel has not referred to because the record is already so voluminous.

XQ. 496. Have you now searched as thoroughly as you can for documents illustrating the different kinds of horns that you say your firm and your corporation manufactured and sold from 1898 to 1905 or thereabouts? A. I am making further searches.

XQ. 497. When did you first commence searching for documents relating to the construction of your early horns for use in connection with this case and similar litigation?

(Deposition of Ellsworth A. Hawthorne.)

A. Some time shortly before I made my deposition.

XQ. 498. Are you now referring to the affidavit that you made in this case, which is dated June 3d, 1913? A. Yes, if that's the date of it.

XQ. 499. The series of diagrams numbers 1, 2, 3 and 4 attached to your affidavit of June 3d, 1913, and referred to by you in that affidavit was a correct representation of the matters intended to be illustrated by those diagrams, was it not? [609]

A. That illustrated some features of the construction of horns made by Hawthorne & Sheble and Hawthorne & Sheble Mfg. Co. and are correct as far as they go.

XQ. 500. And is anything incorrect about the diagrams referred to?

A. Nothing. We made many types of horns and each type of horns required its own particular pattern. I do not attempt to state that the diagram referred to by any means covers all the patterns required to make all the horns of varying models, made either by Hawthorne & Sheble or Hawthorne & Sheble Mfg. Co.

XQ. 501. Is there anything in diagrams 1, 2, 3 and 4, attached to your affidavit of June 3, 1913, or in the description in that affidavit of the diagrams, that is incorrect?

By Mr. HICKS.—Question is objected to as indefinite. It is evidently a catch question. It does not direct the attention of the witness to any particular part of the affidavit or to any particular thing.

A. The diagrams are correct.

(Deposition of Ellsworth A. Hawthorne.)

XQ. 502. Is there anything about the description of the diagrams that is incorrect?

A. Diagram No. 1 indicates the type of horn manufactured by Hawthorne & Sheble from tapering strips of metal, that were wide at one end and narrow at the other, tapering throughout the entire length. Diagram No. 2 is of similar construction. Diagrams Nos. 3 and 4 indicate tapering strips of metal from which types of tapering strips horns were constructed by Hawthorne & Sheble and Hawthorne & Sheble Mfg. Co.

XQ. 503. Now will you please read my last question and state whether there is anything in the description found in your affidavit of June 3, 1913, and the four diagrams attached to your affidavit that you find to be incorrect.

By Mr. HICKS.—Same objection. If plaintiff's counsel is hereafter to urge any incorrect statement of the affidavit he should make his questions specific so that the witness may know what is [610] intended and may not give an answer having no bearing upon what may be concealed in the mind of plaintiff's counsel.

A. There is nothing incorrect in the statements made in my affidavit. The methods illustrated in these diagrams as employed by Hawthorne & Sheble prior to the year 1900 were various. The diagrams do not illustrate all the methods employed by them.

XQ. 504. Of what material was the body of your silk-finish flower horn made?

A. Of tin, brass, and possibly other metals.

(Deposition of Ellsworth A. Hawthorne.)

XQ. 505. Did you make the body of your silk-finish flower horn of steel? A. I think we did.

XQ. 506. During what period of its manufacture did you make the body of your silk-finish flower horn of steel?

A. We experimented with steel in the early stages but we found it was not suitable. I do not think many horns were made of steel with the silk finish.

XQ. 507. When did you abandon the use of steel in your silk-finish flower horn? A. I do not know.

XQ. 508. Approximately how long did you continue using steel in the silk-finish flower horn?

A. That I could not say. I introduced and sold the horns to the trade, and just when they changed from one metal to another metal I could not state positively except that I am positive in regard to the difficulties we had with steel.

XQ. 509. How did you join the edges of the sections of the silk-finish flower horns that were made of steel?

A. Probably in both types, soldered and tinsmith's seams.

XQ. 510. Are you sure you ever made any tinsmith's seams with the steel sections?

A. I am not positive. I know we had a great deal of trouble with steel from other causes outside of rust. When we attempted to form tinsmith's seams the steel broke and we turned to the use of tin. [611]

XQ. 511. Did you continue the use of steel in your silk-finish flower horns for as long as six months?

A. We may have done so.

(Deposition of Ellsworth A. Hawthorne.)

XQ. 512. Did you continue your silk-finish flower horn in steel for as long as a year?

A. I do not know.

XQ. 513. Did you continue your silk-finish flower horns in steel for eighteen (18) months?

A. I have no records to base any dates on when we stopped using one class of material for another, except that I know we used steel in the first instance and had great difficulty on account of rust and other causes.

RECESS.

XQ. 514. To horns made of what material did you first apply your silk finish? A. Steel.

XQ. 515. To what shaped horn did you first apply your silk finish?

A. A horn cylindrical body, tapering in shape.

XQ. 516. Did you first apply your silk finish to the B. & G. style of horn?

A. Yes, to that type of horn.

XQ. 517. How long did you use steel in your B. & G. horn or in that type of horn?

A. As long as we manufactured horns.

XQ. 518. How did you make the seams in the steel horns of the B. & G. type?

A. We made them with the lap seam and the tinsmith's seam. The lap seams were soldered and in some instances we used solder on the tinsmith's seam if the horn developed a rattle.

XQ. 519. In those cases where you made the flower horns of steel sections, soldered, in what way were the edges of the sections joined to each other?

(Deposition of Ellsworth A. Hawthorne.)

A. The first steel horns of the flower type made by Hawthorne & Sheble Mfg. Co. were made with abutting seams. That is to say, the edges of the tapered sections were turned over at right angles and soldered together. Later, after developing machinery, we made the horns with the tinsmith's seam. [612]

XQ. 520. Do you understand that I am now speaking solely of the flower horns made of steel sections, do you?

A. I have answered your question.

XQ. 521. Am I right in understanding you that at first you made your steel sectional flower horns with flanges at the edges, that were soldered together to form a butt seam and that later you turned the edges over to form the locksmith's seam?

A. Yes, sir.

XQ. 522. In what way were the sections of the horn shown on the photographs you produced this morning, X11, 12 and 13, joined?

A. It is hard to tell from the photograph. They may have been horns formed with a butted seam or they may have been horns made with the tinsmith's seam. It is not clear in the photograph.

XQ. 523. Did you ever make any sectional horns of the flower shape, composed of steel sections, the edges of which overlapped each other and were soldered together? A. We may have done so.

XQ. 524. Have you any recollection one way or the other on that point?

A. We made horns that had seams, one edge overlapping the other. We made them with butt seams,

(Deposition of Ellsworth A. Hawthorne.)

where the metal was turned at right angles, and we made horns with the tinsmith's seams and also with seams that were brazed. I do not recollect the flower horns made with the lap seam. It was not a practical way of making them from the manufacturers' standpoint.

XQ. 525. State the names of any of your proposed customers to whom you attempted to sell flower horns for the Xmas trade in 1903.

A. A. D. Matthews & Sons, Brooklyn, N. Y.; Pardee Ellenberger & Co., New Haven, Conn.; J. A. Foster & Co., Providence, Rhode Island; The Eastern Talking Machine Co., Boston, Mass.

XQ. 526. Is it a fact that at any time the Hawthorne & Sheble Mfg. Co. made flower horns out of steel in a practical, mechanical and profitable way?

By Mr. HICKS.—Objected to as immaterial.

A. Our first attempts to introduce the flower steel horn were not [613] profitable because the horns were made by hand in an expensive manner with butted seams soldered and it was not until we refined our processes of manufacturing by the aid of special fixtures and tools that it became profitable. Initial attempts in manufacturing are always somewhat experimental and costly until proper methods have been discovered and adopted.

XQ. 527. Do I understand you now to say that after a while you found steel suitable for the practical manufacture of flower horns?

A. Steel can be used and was used by Hawthorne & Sheble Mfg. Co., practically.

(Deposition of Ellsworth A. Hawthorne.)

XQ. 528. Was steel used by Hawthorne & Sheble Mfg. Co. in the practical and commercial manufacture of flower horns?

By Mr. HICKS.—Same objection, no metal being specified in the patent in suit.

A. Hawthorne & Sheble Mfg. Co. used all metals with more or less varying degrees of success. We had steel made specially for us for manufacturing horns of all types, steel that was put through special processes of annealing for our line of work. Marshall Bros. of Philadelphia supplied steel to us in 10-ton lots, specially annealed, for our manufacturing processes.

XQ. 529. Question repeated. A. Yes.

XQ. 530. Is this letter which I now show you, marked X23, which is dated May 25th, 1904, the letter from which you read into the record the names of Stewart, Wellner, Beach & Matthews, in your answer to Q. 475? A. Yes.

By Mr. HICKS.—The letter referred to is offered in evidence and marked "Defendant's Exhibit, Letter of May 25, 1904, H. Sheble to E. A. Hawthorne, Frank Z. Demarest, Examiner."

XQ. 531. Will you please produce the two price-lists for the season 1903-1904, Nos. 40 and 50 respectively, which you previously marked X2 and X3; also the flower horn circular that you referred to on your direct examination and which you marked X9 in red ink and the [614] circular letter of June, 1904, which you produced and which you have marked in pencil X15. A. I herewith produce them.

(Deposition of Ellsworth A. Hawthorne.)

By Mr. HICKS.—Defendant offers in evidence the papers referred to in the last question. The same are marked “Defendant’s Exhibit, Trade Price-list No. 40, 1903–1904, Trade Price-list No. 50, 1903–1904, Flower Horns for Talking Machines and Circular Letter of June, 1904, of Hawthorne & Sheble Mfg. Co., Frank Z. Demarest, Examiner.”

XQ. 532. In the other papers which you found some 10 days or so ago and which are now in the possession of counsel for defendant, are there any price-lists or circulars relating to horns, covering 1902?

By Mr. HICKS.—Objected to as immaterial.

A. There is one which I had marked in pencil “X 19” and which is trade price-list No. 406 for catalogue No. 403.

XQ. 533. And among these papers is there a circular price-list of Dec. 23, 1903, relating to horns?

A. Yes, it is the document marked in red ink “X 6” which was issued Dec. 23d. 1903.

XQ. 534. And is this document which I now show you and which is marked in red ink X4, your confidential price-list for the season 1903–1904?

A. Yes.

XQ. 535. And is this document I now show you which is marked in pencil X18, a circular price-list of your flower horns which your company issued May 20, 1905? A. Yes.

Complainant’s counsel asks that the documents above referred to marked X19, X6, X4 and X18 be marked for identification as “Complainant’s Exhibits for Identification, Hawthorne & Sheble Price-

(Deposition of Ellsworth A. Hawthorne.)

list 1902-1903; Hawthorne & Sheble Price Circular Dec. 23d, 1903; Hawthorne & Sheble Confidential Trade Price-list No. 40, Season 1904-1905; and Hawthorne & Sheble Price-list of Flower Horns May 20, 1905," respectively.

XQ. 536. Have you been able to find a catalogue No. 403 referred to in your trade price-list of 1902-1903? A. No, I have not.

Cross-examination closed.

Redirect Examination by Mr. HICKS.

RDQ. 537. In answer to Q. 457, describing the seam by which the strips [615] composing the horn shown in the three photographs X11, 12 and 13, were joined together you said, "The seams were carried on the outer portion of the horn, soldered together, and striped with paint." Please state how the soldering was effected.

A. The edges of the longitudinal strips were bent over at right angles, tacked together at each end with solder to hold them in position, placed on a form and the solder run down the rib or seam to solder them together.

RDQ. 538. You say that the edges of the longitudinal strips were bent over at right angles. In what direction were these edges bent over?

A. Outwardly, on the outside of the horn.

RDQ. 539. Please refer to Fig. 3 of the Nielsen Patent in suit, No. 771,441, and compare the bent-over edges there shown, of the longitudinal strips of the Nielsen horn with the bent-over edges of the longitudinal strips of steel of the horns made by

(Deposition of Ellsworth A. Hawthorne.)

Hawthorne & Sheble Mfg. Co. as shown in the 3 photographs X11, 12 and 13.

A. The method illustrated in the Figure 3 of the Nielsen Patent is identical with the method employed by Hawthorne & Sheble Mfg. Co.

RDQ. 540. Among the papers which you have recently produced and exhibited to plaintiff's counsel is a card of bearing the name "Hawthorne & Sheble" and an illustration of a horn. Please state when that card was printed and describe how the horn there represented was made.

A. The card marked "X7," "Hawthorne & Sheble" is one of a similar lot used by me previous to the incorporation of Hawthorne & Sheble Mfg. Co. and previous to April 20th, 1900. I do not know the exact date it was printed but it was printed previous to that date. When the Hawthorne & Sheble Mfg. Company were incorporated I used a card with the name of the corporation. This card also bears address "43 Broad St.," which indicates that the card was in use by me in the latter part of 1898 or early part of 1899.

It bears a cut of the 56-inch concert horn which was made of [616] tapering strips of metal, wide at one end, narrow at the other, tapering throughout their length.

RDQ. 541. Please describe the edges of the tapering strips of metal that were used to build up the horn shown by the illustration on the Hawthorne & Sheble card.

(Deposition of Ellsworth A. Hawthorne.)

A. The tapering edges were joined together by being brazed.

RDQ. 542. That is not what I meant. What was the direction or configuration of the edges of the tapering strips of metal?

A. The strips of metal were curved and were tapering throughout their length in order to give the horn its tapered shape.

RDQ. 543. It appears from an inspection of the illustration of the horn shown on the card that the horn tapers and curves from one end to the other. Would it be possible to build up or construct such a horn, as far as your experience goes, in any way other than by employing tapering sections of metal or other suitable material, having curved meeting edges?

A. In order to secure that shape of horn it is necessary to have the longitudinal sections taper throughout their length and curve.

Redirect examination closed.

By Mr. HICKS.—The card produced by the witness is offered in evidence and marked “Defendant’s Exhibit, Card of Hawthorne & Sheble, of Prior to April 20, 1900, Bearing the Illustration of a Curved Sectional Horn, Frank Z. Demarest, Examiner.”

Recross-examination by Mr. DUNCAN.

RXQ. 544. Is there anything on this illustration of the horn of the exhibit just offered that shows that it was built up of longitudinal sections or is it a matter of your memory that this horn was constructed in that way?

A. It would not be possible, according to my knowl-

(Deposition of Ellsworth A. Hawthorne.)

edge of the manufacture of horns, to make this horn in any other way than I have described; but there is nothing in the picture on the card to indicate that the horn is made in the manner described, although any expert could corroborate my statement. [617]

RXQ. 545. Was there any circular seam on the horn illustrated on the card just offered in evidence?

A. There is none that I can discover.

RXQ. 546. I am asking whether the horn that was made by you which was illustrated on this card was actually made with a circular seam or not. A. No.

RXQ. 547. Did you make no 56-inch brass horns with circular seams?

A. We made 56-inch concert horns with and without circular seams.

RXQ. 548. When you made them with circular seams where was the circular seam located?

A. Some 56-inch horns we made with separate bells and brazed them to the body, the bells being made of longitudinal tapered section, curved, and the bodies being made in the same manner. We also made them from longitudinal sections tapered and curved and brazed together, out of long strips of metal. The bells of the 56-inch concert horns joined to the bodies with seams and bands, the seams brazed and the bands brazed on to the two sections, was practically the same construction as the flower horn in which you make the body out of tapered, curved sections and fasten the top to the body with solder.

RXQ. 549. What is indicated by the white line running from about the center of the handle on the left side of the horn illustrated on the Hawthorne &

(Deposition of Ellsworth A. Hawthorne.)

Sheble card just offered in evidence and extending around the horn toward the right, passing between the letters H and O printed across the horn?

A. I don't know; it is not distinct enough for me to determine whether it was due to imperfect printing or other reasons.

We made 42-inch horns and 48-inch horns of the correct type, which we termed our full-spun brass horns, and these we made up without seams or, more correctly speaking, brazing the bell to the body or a circle or a band. We made many 56-inch concert horns without the circle or band. [618]

RXQ. 550. May not this white line referred to in the last question indicate the circular seam formed by brazing the wide portion of the horn to the tapering conical portion and correspond with the line shown on the illustration of the horn on p. 3 of your catalogue No. 600, in evidence?

A. I have just examined the card marked X 7 with a powerful microscope, and I cannot detect any line on the horn.

On p. 33, "Defendant's Exhibit, Catalogue of 1898 of the Firm of Hawthorne & Sheble" indicates a fifty-six inch horn without seam or circle. I do not believe that the horn illustrated on the card had a circle or had a seam at the point you indicate.

RXQ. 551. How do you know that the horn on the card is a 56-inch horn? Is there anything on the card that shows that?

A. The horn shown on the card I cannot mistake. It was my pet horn. It was my ideal of a proper re-

(Deposition of Ellsworth A. Hawthorne.)

producing horn. It was then; it is now. I cannot possibly be mistaken.

RXQ. 552. Did you make this same style horn in any size smaller than 56-inch? A. Yes.

RXQ. 553. How do you know that the illustration on this card was taken from a 56-inch horn rather than a smaller horn?

A. On a smaller horn the proportions would be different. I had the cuts made; I had the photographs taken. I designed the horn; I sold it for years; I know it.

RXQ. 554. Does your catalogue No. 600 contain any illustration of your 56-inch brass horn?

A. On p. 3 is shown a cut or illustration of a 56-inch horn. This was made late in the history of Hawthorne & Sheble Mfg. Co. On the front page of catalogue issued by the Columbia Phonograph Co., of the Graphophone Grand, is an illustration of a 56-inch horn made in a similar manner to the horn illustrated on the card marked "X7." The first 56-inch conical horns made by Hawthorne & Sheble were made without a seam and without a band. All similar types of [619] horn smaller or less in length than 56-inch, with but very few exceptions, were made without seam or band. The construction of the 56-inch concert type was changed on account of the high cost of the wide metal and was built up in many sections, as I have previously testified, to overcome those faults.

RXQ. 555. Is your 56-inch brass concert horn illustrated in "Defendant's Exhibit, catalogue of

(Deposition of Ellsworth A. Hawthorne.)

1898, of the firm of Hawthorne & Sheble? If so, on what page?

A. It is illustrated on page 20 and on page 21, and on p. 33.

Recross-examination closed.

Re-redirect Examination by Mr. HICKS.

RRDQ. 556. Was the cut on the Hawthorne & Sheble card made from a photograph?

A. It was.

RRDQ. 557. Was the horn shown on the Hawthorne & Sheble card made of metal?

A. It was made of brass.

Re-redirect examination closed.

Deposition closed.

Signature waived.

It is stipulated by and between counsel for plaintiff and defendant that if C. D. Emerson were called to testify in this suit he would testify in accordance with the statements set forth in the affidavit verified by him herein, on June 18, 1913, subject, however, to the right of plaintiff's counsel to cross-examine said Emerson, who is to be produced for such cross-examination by defendant's counsel upon request of plaintiff's counsel. It is further stipulated that said affidavit of said Emerson shall not be used as evidence in this suit in case this suit comes to trial within twenty (20) days from this date and before said witness Emerson has been produced for cross-examination and it is further agreed that the making of this stipulation shall not be urged as a reason for the postponement of the trial of this suit in order

that the [620] cross-examination of said witness Emerson may be had.

[Deposition of Paul Kohler, for Defendant.]

PAUL KOHLER, being duly sworn as witness on behalf of defendant, testifies as follows:

Direct Examination by Mr. HICKS.

Complainant's counsel inquires as to the purpose of defendant's counsel in putting this witness on the stand, whose name has not been mentioned in any of the pleadings or notices of taking testimony.

By Mr. HICKS.—Defendant's counsel did not learn of the testimony which he desires to take of the present witness or of any of the facts relating thereto until October 24, 1913. Defendant set forth in its answer that it was diligently engaged in seeking further information and prayed leave to amend its answer accordingly. Defendant's counsel notified plaintiff's counsel on October 26 that he would take the deposition of the present witness. Defendant's counsel proposes to show by the deposition of the present witness that the horn of the Nielsen Patent in suit was made at Pittsburgh, Pa., as early as 1887 or 1888.

By COMPLAINANT'S COUNSEL.—Complainant objects to the taking of testimony from this witness on the ground that the alleged prior use or anticipation by this witness is not among those set forth in the answer, and no leave has been obtained to amend the answer. Complainant's counsel has repeatedly extended defendant's time to complete its proofs in the east under the existing order and the

(Deposition of Paul Kohler.)

present case is now set for a hearing at the opening of the Equity calendar on Nov. 3d. Complainant must therefore take its proofs by deposition in New York and vicinity in time to get the same to this court for the early hearing of this case and is therefore unwilling that the defendant should at this late date undertake to open up new lines of defense not already pleaded in the answer. Notice is given that the deposition of this witness if taken will be taken without authority of the court or consent of complainant, and for these reasons if such deposition be taken motion will be made to strike the same from the trial.

By Mr. HICKS.—Plaintiff has taken no testimony in this suit up to the present time, although plaintiff has had ample opportunity so to do. In view of the circumstances set forth in the foregoing statements of said counsel and because the witness has come on from Pittsburg, Pa., to New York and because the witness resides more than two thousand miles from the place of trial and cannot therefore be produced at the trial and because defendant is entitled to take the testimony [621] of this witness to show the state of the prior art and will ask the Court for leave to amend the answer, according to the notice heretofore given, the deposition of the witness will be taken and the Court will be requested to make such ruling as will meet the end of justice.

Q. 1. Please state your name, age, residence and occupation.

A. Paul Kohler, age 51; residence, Pittsburgh,

(Deposition of Paul Kohler.)

Pa., sheet metal worker.

Q. 2. How long have you been occupied as a sheet metal worker? A. Thirty-five years.

Q. 3. Did you ever make a horn for a phonograph; and, if so, when and where ?

A. In the year 1888 being employed by Duffey & Clark, 518 Grand St., Pittsburgh, Pa., I made a horn as sample showing and two or three months later on made from five to six more.

Q. 4. Who were Duffey & Clark?

A. Duffey & Clark was the proprietors of that tin shop.

Q. 5. Did anyone assist you in the making of the horn first made in 1888?

A. John King, general foreman of said shop, helped to assist on said horn.

Q. 6. Did John King assist you in the making of the additional five or six horns made two or three months after the making of the first horn?

A. He did so.

Q. 7. Now, please state what you and John King did in the making of these horns for phonographs in the year 1888, describing first the making of the first horn and then the making of the additional 5 or 6 horns.

A. John King as general foreman of said shop cutting the pattern for said horn which were in tapering strips, instructed me to cut 16 of said strips out of tin to form one horn. John King, after the strips were cut, assisted to help to put those strips in proper form, which formed a bell-shaped horn.

(Deposition of Paul Kohler.)

Q. 8. How many patterns did John King make or devise for the cutting of the 16 strips, of the metal horn? A. One pattern.

Q. 9. What was the shape of the pattern?

A. The shape of the pattern was $3\frac{1}{2}$ to $3\frac{3}{4}$ " at one end, tapering down to $\frac{3}{4}$ of an inch.

Q. 10. Describe the way or manner in which the pattern tapered on the side from *one* to the other.

A. At one end of said strips there was formed what tinnerns call a standing seam, double on one side and single on the other; said strips clinched together and soldered on the inside.

Q. 11. Describe the way in which the sides of the tapering strips ran, that is to say, what kind of line was formed by each side of the tapering strips.

A. The said tapered strips had curved lines on both sides in order to get the bell-shaped horn.

Q. 12. Was any material used to cause the parts forming the seams to adhere together; and if so, what was the material used?

A. The material in said horns was common roofing-tin.

Q. 13. What I want to know is what was done to join together the seams formed by turning over the edges of the strips in the manner you have described.

A. The one side of the flaring strips was turned up on a right angle and turned over this single edge on the following strip.

Q. 14. I understand that you turned up one edge of one strip at a right angle; and that you bent or turned the edge of the next strip so that it would

(Deposition of Paul Kohler.)

fold over the turned-up edge of the adjoining strip. Now what I want to know is how you made these two stick together.

A. By soldering said strips on the inside.

Q. 15. You say that you soldered on the inside. Just what do you mean by the "inside"?

A. That is we soldered the inner side where the two strips met. [623]

Q. 16. Describe the shape of the wide end of each of these 16 strips.

A. The strips of said horn run in the length of 26 inches, $3\frac{1}{2}$ to $3\frac{3}{4}$ " at one end down to $\frac{3}{4}$ " at the other end. The said strips had a circular cut on the large end.

Q. 17. Was the horn made up from anything beside the 16 tapering strips?

A. No, they were not. All horns that were made, to my knowledge, for the firm of Duffey & Clark had 16 strips to the horn.

Q. 18. Was any provision made for connecting the horn made of the 16 strips with the phonograph?

A. After the 16 strips were put in proper position to form said horn, on the smaller end was placed a tapering tube about 6" long, 3" on the larger and about $\frac{3}{4}$ " on the small end; also was placed a tube on the small end $\frac{3}{4}$ " in diameter and about $1\frac{1}{4}$ " to $1\frac{1}{2}$ " long, a straight tube to receive a piece of hose.

Q. 19. Have you recently made a sample of the first horn made by you and John King in 1888?

A. I have.

Q. 20. Will you please produce the sample?

(Deposition of Paul Kohler.)

A. There it is.

Q. 21. How did you come to make this sample and when did you make it?

A. This sample horn shown on the floor was made about two weeks ago for Mr. J. D. Meyers.

Q. 22. Who is Mr. J. D. Meyers?

A. Mr. J. D. Meyers represents a law firm in Camden, New Jersey.

Q. 23. Who requested you to come here to New York and testify?

A. Mr. Nichols, manager of the Pittsburgh firm of the Columbia Phonograph Co.

Q. 24. Is Mr. John King or Mr. Duffey or Mr. Clark of the firm of Duffey and Clark still living?

A. Mr. Clark and Mr. Duffey, also John King, have passed away.

Q. 25. Is there anybody that you know, who saw the first horn that you and John King made in 1888?
[624]

A. I do. From 6 to 8 men in the city of Pittsburgh at the present time will confirm my statements.

Q. 26. Please give the names and addresses so far as you can of these 6 or 8 men who saw this horn in 1888.

A. John King, Jr., Robert Siegfried, Christ Coulter, Mr. Keely, I don't know his first name; I could not tell the addresses of said men.

Q. 27. Do they live in Pittsburgh, Pa.?

A. They do live in Pittsburgh, Pa. I could find the addresses very easily in Pittsburgh and locate said parties.

(Deposition of Paul Kohler.)

Q. 28. Will you kindly find the addresses and locate the said parties and let me know them in order that I may have them and in order that I may furnish the names and addresses to plaintiff's counsel?

A. I will gladly do so.

Q. 29. Please state whether the sample or model horn that you have produced correctly represents the first horn made by you and John King in 1888.

A. It does, as near as I possibly could do.

Q. 30. Is *there particular* point about which you have any doubt, in making this sample horn?

A. None, whatever.

By Mr. HICKS.—The sample horn produced by the witness is offered in evidence and marked "Defendant's Exhibit, Model Kohler-King Horn of 1888, Frank Z Demarest, Examiner."

By Mr. DUNCAN.—Same objections as stated by complainant's counsel at the opening of this deposition.

Q. 31. How did the 5 and 6 additional horns compare with the first horn made by *your and* John King in 1888?

A. The additional 5 or 6 horns were made of the same pattern, same shape and all.

Q. 32. By "pattern" do you refer to the pattern which John King provided for the cutting of the longitudinal strips?

A. By that pattern which John King cut for the first horn.

Q. 33. Was there any difference between the additional 5 or 6 horns [625] and the first horn?

(Deposition of Paul Kohler.)

A. None, whatever.

Q. 34. For whom were these horns made in 1888?

A. After the first horn was made I understood that there was a company located in the Anchor Bank Building on 5th Ave., Pittsburgh, Pa., where they used these horns for talking machines.

Q. 35. When did you obtain the information that the horns that you and John King made were intended for use on talking machines?

A. Shortly before we started our five or six horns later on.

Q. 36. How do you fix the date as the year 1888 when you made these horns with John King in Pittsburgh?

A. By the celebration of the one hundredth anniversary of Alleghany County, Pa.

Q. 37. Please compare the date at which you made these horns, together with John King, with the date of the World's Fair at Chicago, 1893?

A. There is about five years difference.

Q. 38. Did you make these horns before or after the World's Fair? A. Before.

Q. 39. Is there any name by which the seam or ribs shown on the model horn which you have produced is known?

A. The ribs on said horn are called in our trade the standing seam.

Q. 40. For how long have you been familiar with the standing seam?

A. From 25 to 30 years. Said *join* is also used in all angles and elbows.

(Deposition of Paul Kohler.)

Q. 41. In order to obtain the bell shape of this model horn which you have produced how was it necessary to cut the longitudinal strips of which the bell of the horn is made?

A. It is impossible to cut said strips perfectly straight and give the horn the bell shape. Said strips must be cut on a flare.

Q. 42. Is there anything else that you think important to state with regard to the construction of these horns by you and John [626] King in 1888, in order to acquaint the court fully in regard to the facts?

A. Not that I know of outside of what I have said.

Adjourned to Tuesday, October 28, 1913, at 10:00 A. M., same place.

PAUL KOHLER.

Read over, sworn to and subscribed by the witness, Paul Kohler, in my presence this 28th day of October.

[Seal] FRANK Z. DEMAREST,
Notary Public in and for the City, County and State
of New York.

October 28, 1913.

Met pursuant to adjournment.

Present: Counsel as before.

Direct examination closed.

By Mr. DUNCAN.—Complainant's counsel again points out that there is no justification in the answer for the taking of the deposition of this witness and that the taking of the same therefore is outside of the issues of the case and is without authority of

any statute or order of the Court, but is in violation of the statutes and rules governing procedure in equity cases. It is further pointed out that this deposition has been taken over the protest of complainant's counsel after the expiration of the time limited to defendants to take their proofs for use on the trial of this case and that no order of Court or consent of opposing counsel has been obtained, extending defendant's time to take the deposition of this witness. Complainant's counsel repeats the objection made at the opening of this deposition and now moves that the deposition in its entirety be suppressed. In view of the circumstances under which the deposition is taken, complainant cannot properly be called upon to recognize the deposition or to cross-examine the witness and for these reasons complainant's counsel declines to cross-examine the witness. It should further be noted that this case is set for hearing on the November term of the District Court in San Francisco and in order that complainant may complete its proofs in the east for use at such trial it will be necessary for complainant to proceed immediately answering those proofs properly taken by defendants under the order of Court. Complainant's counsel has several times extended defendant's time under this order to recall the witness Hawthorne and the time is so short now that it is impossible for complainant to enter upon any new investigation or to take any further proofs than proofs in connection with evidence already properly taken by defendants [627]

within the order heretofore made. And for this reason also complainant's counsel declines to recognize the deposition of the witness Paul Kohler and declines to cross-examine him.

By Mr. HICKS.—The objection made by complainant's counsel to the deposition of the witness Paul Kohler, is entirely technical and in view of the circumstances is clearly oppressive. At the request of complainant's counsel, the witness, who had been brought on from Pittsburgh at considerable expense, remained over night in New York in order that he might be cross-examined by plaintiff's counsel. In view of the fact that practically all of defendant's evidence has necessarily been taken in the east at such a great distance from the place of trial and because it was absolutely impossible for defendant to make a motion for leave to amend the answer before taking the deposition of the witness Kohler and since the answer can be amended by the Court in its discretion to conform to the proofs and since plaintiff's counsel has been present upon the direct examination of the witness and is now present and can cross-examine the witness and since it would involve great expense and loss of time to produce this witness again for examination or cross-examination, defendant's counsel gives notice that a motion will be made for an order permitting the deposition of the witness to stand, *nunc pro tunc*, and amending the answer and requiring plaintiff's counsel to cross-examine the witness at Pittsburgh, Pa., if plaintiff's counsel desires to cross-examine the witness. It is obvious that the *court* pursued by

plaintiff's counsel is unjust and obstructive and would involve the parties in great expense and loss of time, which can now be obviated by the cross-examination of the witness. For these reasons defendant's counsel requests plaintiff's counsel to proceed now with the cross-examination of the witness, reserving, if he desires, his objections in order that the whole matter may be presented to the Court and the difficulties pointed out avoided.

By Mr. DUNCAN.—The objection raised by complainant's counsel is not a technical one. This case is set for a hearing in San Francisco next week and complainant's counsel is advised that the case will be heard at that time. At the request of defendant's counsel several extensions have been granted defendants to enable them to take testimony within the issues raised by the pleadings and to complete the depositions of certain witnesses called by defendants when they commenced taking their proofs in the east. It is only by proceeding with the greatest expedition that complainant can complete its proofs in time for use on the trial, the bulk of complainant's proofs necessarily being taken in the east; and it is submitted that there is nothing technical in objecting to the defendants, after they have taken over four hundred pages of depositions relating to various alleged prior uses, suddenly interjecting a new defense into the case and endeavoring, at this time, to take testimony relative thereto without order of Court, when it is apparent that it would be impossible for complainants to make investigation relative to the alleged new defense or to take re-

buttal proofs concerning the same in time for the trial. Complainant's counsel therefore declines to take any step such as cross-examination, that would directly or indirectly recognize the deposition given by the witness Kohler. [628]

By Mr. HICKS.—The testimony of the witness Kohler is newly discovered evidence, of which defendant's counsel first obtained notice on October 24, 1913. Defendant's counsel was unable to communicate with the witness until yesterday, when the witness appeared to give his testimony. This suit has been brought in the far west as a test suit, with regard to horns manufactured and sold in the east. It is the express purpose of Mr. Miller, plaintiff's counsel, to attack the American Graphophone Company, Thomas A. Edison, Incorporated, The Victor Talking Machine Co. and other companies making and selling talking machines or horns for talking machines. This suit is an important one and defendant's counsel has been devoting his entire time to it. The public is interested in this attempt to enforce a patent clearly shown to be invalid by the testimony of the witness Kohler and by the other evidence introduced by defendant. Defendant is entitled to a fair trial upon all the evidence that can be adduced and if plaintiff requires additional time to investigate the subject matter of the testimony of the witness Kohler, defendant's counsel is perfectly willing that plaintiff shall have it and that plaintiff shall have all reasonable opportunity to present its case fully in court.

Defendant's counsel understands that plaintiff's

counsel makes no objection to the deposition given by the witness, E. A. Hawthorne, on October 27, 1913, upon the ground that defendant's time to take depositions had expired.

By Mr. DUNCAN.—Defendant's counsel, prior to the taking of the further deposition of Mr. Hawthorne on October 27, asked complainant's counsel for permission to recall Mr. Hawthorne and examine him further; and complainant's counsel agreed that Mr. Hawthorne might be recalled on Oct. 27. For this reason no objection is made to the deposition of Mr. Hawthorne taken on Oct. 27, on the ground that it was taken after the expiration of the time limited by the order fixing time for taking testimony.

Deposition closed.

By Mr. DUNCAN.—As to all depositions taken by defendant's counsel in the east in these suits before Frank Z. Demarest, Notary Public, and Alexander Park, Notary Public, except, however, the deposition of Paul Kohler, complainant's counsel waives the signing of said depositions by the witnesses and the readings of said depositions by the witnesses. [629]

[Notarial Certificate to Depositions of Walter H.
Miller et al.]

*District Court of the United States, Northern Dis-
trict of California, Second Division.*

IN EQUITY—No. 18.

SEARCHLIGHT HORN COMPANY,

Plaintiff,

vs.

PACIFIC PHONOGRAPH COMPANY,

Defendant.

State and County of New York,—ss.

I, Frank Z. Demarest, a notary public in and for the City, County and State of New York and Southern District thereof, duly commissioned and sworn, do hereby certify that the above-named witnesses, Walter H. Miller, Harvey Nesbitt Emmons, Edward W. Meecker, Frank H. Stewart, John Kaiser, Camillus A. Senne, Ellsworth A. Hawthorne, John H. George, William A. Lawrence, William Edwin Parker and Eugene Henry Byrnes and Paul Kohler, were each by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth and were carefully examined; that their depositions and each of their depositions were reduced to typewriting by Miss Josephine Nessler, under my personal supervision, and by no other person, in the presence of the witnesses themselves and of each of them from the statements of the witnesses and each of them; that the depositions of said

witnesses and of each of them were taken in the presence of counsel for both and each of the parties in the above-entitled suit, who waived the signature of the said witnesses and of each of them to their respective depositions and waived the reading of said depositions and of each of them by the respective witnesses, except the deposition of Paul Kohler, who read over his said deposition and signed his name thereto in my presence; that said depositions and each of them were taken pursuant to notice at the times and places stated above, except the deposition of said Paul Kohler, whose deposition was taken as set forth in the above remarks of counsel; [630] that plaintiff was represented at the taking of such depositions by Mr. John H. Miller and by Mr. Frederick S. Duncan, and that the defendant was represented by Mr. Louis Hicks as stated above in said depositions; that the several exhibits were offered in evidence and marked as specially noted in the said depositions; and that I am not of counsel or attorney to either of the parties in the above-entitled suit nor interested in the event of the cause.

Dated this 28th day of October, 1913, at the city, county and State of New York.

[Seal] FRANK Z. DEMAREST,
Notary Public in and for the City, County and State
of New York.

[Endorsed]: Filed Nov. 5, 1913. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [631]

(Title of Court and Cause.)

**Deposition of Wm. J. Elwell, Esq., on Behalf of
Defendant.**

Meeting held pursuant to due notice at 705 Witherspoon Building, Philadelphia, Pennsylvania, October 10, 1913, at 10:30 A. M., for the purpose of taking proofs for final hearing in the above-entitled suit on behalf of the defendants in each of said suits, before Alexander Park, Esq., a Notary Public in and for the County of Philadelphia, Commonwealth of Pennsylvania, acting as Examiner.

Present: FREDERICK S. DUNCAN, Counsel for
Complainant.

FREDERICK A. BLOUNT, Counsel for
Defendant.

It is stipulated and agreed by and between counsel that the proofs about to be taken will suffice for both suits and that the witness Elwell shall be sworn in both suits and that the original copy of his deposition may be used in the suit first above-entitled and a carbon copy for the suit last above-entitled.

WILLIAM J. ELWELL, a witness called on behalf of the defendants being duly sworn, according to law, deposes and says in answer to interrogatories propounded by Mr. Blount as follows:

Q. 1. Please state your name, age, residence and occupation.

A. William J. Elwell; legal age; 2237 South 68th Street; Manager, Talking Machine Department, C. J. Heppe and Sons, Philadelphia.

Q. 2. Where do C. J. Heppe & Son, have their place of business in Philadelphia?

(Deposition of Wm. J. Elwell, Esq.)

A. 1115-17-19 Chestnut Street.

Q. 3. What is the business of C. J. Heppe & Son?

A. Dealers in pianos, talking machines and sundry musical instruments.

Q. 4. How long have you been manager of the Talking Machine Department of C. J. Heppe & Son?
[632]

A. Since October, 1898.

Q. 5. What are your duties as such manager?

A. Purchase all stock pertaining to the Talking Machine Department, as well as the general supervision of that department.

Q. 6. Do you know of any concern called Hawthorne & Sheble or Hawthorne & Sheble Manufacturing Company?

A. I knew that there was such a concern under both names.

Q. 7. How far back does your knowledge go?

A. In 1897 the firm of Hawthorne & Sheble was in business at 6th and Chestnut. Afterwards the firm of Hawthorne & Sheble Manufacturing Co. were located at Oxford or Mascher and Jefferson, I think.

Q. 8. What was the business of Hawthorne & Sheble and its successor, if you know?

A. Dealers in talking machines and manufacturers of talking-machine supplies, cabinets and repair parts, horns, and other paraphernalia used in the talking-machine business.

Q. 9. Did you as manager of C. J. Heppe & Son, ever have any business dealings with Hawthorne & Sheble or its successor? A. I did.

(Deposition of Wm. J. Elwell, Esq.)

Q. 10. What were these dealings?

A. Purchase of talking-machine supplies, cabinets, carrying cases, horns, etc.

Q. 11. Please describe the horns which you, on behalf of C. J. Heppe & Son, which you purchased from Hawthorne & Sheble or its successor. By this I mean describe the different types of horns?

A. I purchased a variety of types of horns. Horns were both for the Edison and Victor Talking Machine of the conical and also of the flower type.

Q. 12. Please describe in your own words the construction of the horns which you have referred to as the "flower type"? [633]

A. What was known as the flower type horn was made up of a number of sides and in shape resembled the morning-glory flower.

Q. 13. I show you a paper and ask that you tell me what you know about it?

A. This circular letter was received by me on or about April 15th or 16th, 1904.

Q. 14. Do you recognize the signature subscribed at the end of the letter?

A. To the best of my knowledge and belief it is the signature of Mr. Sheble of the Hawthorne & Sheble Co.

Q. 15. How was this letter delivered to C. J. Heppe & Sons?

A. Through the United States mails.

Defendants' counsel offers in evidence the paper shown the witness and the same is marked "Defendants' Exhibit, Circular Letter of April 15th,

1904, of Hawthorne & Sheble Manufacturing Company."

By consent of counsel, the copy of the above exhibit is now spread upon the record as follows with the same force and effect as the original letter and it is stipulated that the original letter may be withdrawn subject to inspection if desired by complainants' counsel.

[Defendants' Exhibit, Circular Letter of April 15, 1904, of Hawthorne & Sheble Manufacturing Company.]

Horace Sheble, Vice-Pres. and Treas.

Ellsworth A. Hawthorne, President.

El Dorado Manley, Secretary.

**HAWTHORNE & SHEBLE MANUFACTURING
COMPANY.**

Incorporated State of Pennsylvania.

Manufacturers and General Sales Agents.

Talking Machines and Supplies.

Sporting Goods Cabinets.

Office Specialties.

General Novelties.

Factory and Office:

Mascher and Oxford Streets. [634]

Philadelphia, Pa., U. S. A. Cable Address:
Wholesale Export. "Shebthorne, Philadelphia"
A-B-C and Liber's Code Used
Local and Long Distance
Telephones.

Philadelphia, Pa., U. S. A., April 15th, 1904.
Station "O."

Dear Sir:

For over a year past we have been working on new model horns to which we could apply a Silk Finish, as the trade are now universally accepting such a finish as a standard of merit. We have had our models ready for some time past, but have been somewhat delayed in their manufacture.

Our patents which have been allowed on Silk Finish Horns will cover the finish on these horns, and we have under way patents to cover the new shapes which we are adding to our line.

The new horns will be known as the "Flower Silk Finish Horns." They are made of long steel sections joined together and tapering throughout their length like the petals of a flower.

The outside will be "Silk Finish" with gold strips between the petals, and the inside handsomely decorated to represent a flower such as a Morning-glory, Lily, etc. The effect is certainly very attractive, as they are by far the handsomest horns which have ever been produced, and will undoubtedly meet with an enormous sale.

We are now placing on the market
For Cylinder Machines

#0 3024 Flower Horn, Length 30 in., width of bell
24 in.

For Victor Tapering-arm Machines.

#0 2824 Flower Horn, Length 28 in., width of bell
24 in.

Write for quotations.

Yours very truly,

HAWTHORNE & SHEBLE MFG. CO.,

Per H. SHEBLE.

Dict. H. S. [635]

Q. 16. Can you recall any specific purchase of horns of the flower type from Hawthorne & Sheble Manufacturing Company?

A. Not without consulting the books in which I kept a record of such purchases.

Q. 17. Have you such a book with you?

A. Yes, sir.

Q. 18. You may consult the book which you have produced and then state whether or not you can recall any specific purchase of horns of the flower type from Hawthorne & Sheble Manufacturing Company.

A. The first record I appear to have of the purchase of the flower horn was on June 23d, 1904.

Q. 19. Please state what that record shows?

A. On that date my record showed that I received from Hawthorne & Sheble Manufacturing Company, one No. 0 3024 Flower horn, one No. 0 2824 flower horn.

(Deposition of Wm. J. Elwell, Esq.)

Q. 20. Who made the entry in the record which enables you to testify as you have?

A. The entries are made in my own handwriting.

Q. 21. What significance, if any, does the numbers of the horns have to you?

A. The number in this case designates the size and style of finish of the horn.

Q. 22. Taking each number, please show how it enables you to determine the size and finish of the horn to which it is applied?

A. The number 0 3024 tells me that the horn was intended for an Edison machine, that the horn is 30 inches long with a 24-inch flare of bell and the 0 tells me that the horn is silk finish. The number 0 2824 tells me that the horn was made for use on a Victor Talking Machine 24-inch flare of bell with an equivalent length of 28 inches and the 0 indicates that it was of silk finish. [636]

Q. 23. When did you make the entry in the records to which you have just been referring?

A. On the date given as the date of the record.

Q. 24. And what is that date?

A. June 23d, 1904.

Defendants' counsel offers in evidence page 114 of the book produced by the witness on which page appears the entry referred to by the witness, and the same is marked "Defendants' Exhibit Page 114 of Stock Book of Heppe & Son."

Defendants' counsel states that the stock book of Heppe & Son just referred to is the property of C. J. Heppe & Son and that the witness informs coun-

(Deposition of Wm. J. Elwell, Esq.)

sel that he has no right to let this book out of his possession. Complainants' counsel is requested, therefore, to stipulate that this exhibit shall be subject to the provisions of the stipulation entered into regarding "Defendants' Exhibit Circular Letter of April 15th, 1904."

Direct examination closed.

Cross-examination by Mr. DUNCAN.

XQ. 25. Do I understand that the book that you have produced is the regular stock-book of Heppe & Son in which were regularly entered all purchases of phonograph parts and supplies as received each day? A. It is.

XQ. 26. The entries in this book commence with December 29, 1902, and continue regularly up to June 23, 1904, and from that date on to and including Tuesday, October 8th, 1907, do they not?

A. December 29th, 1902, up to October 8th, 1907, inclusive.

XQ. 27. Were you asked by defendants' counsel to go through this book with a view of finding the earliest entry of the purchase by your company of a horn of the flower type? A. I was not.

XQ. 28. Were you asked by any one to go through this book for that [637] purpose?

A. I was not.

XQ. 29. As a matter of fact have you gone through this book for the purpose of finding the earliest entry of the purchase of a horn of the flower type? A. I did.

XQ. 30. And the entry that appears on page 114

(Deposition of Wm. J. Elwell, Esq.)

is the earliest entry of the purchase of a horn of the flower type?

A. To the best of my knowledge it is.

XQ. 31. After the purchase by your firm from Hawthorne & Sheble on June 23d, 1904, of a horn of the flower type, did your firm subsequently purchase other horns from Hawthorne & Sheble of the flower type? A. They did.

XQ. 32. Is it not a fact that toward the end of 1904 and particularly during 1905, your firm purchased horns of the flower type from Hawthorne & Sheble in considerable numbers?

A. I couldn't answer off hand without consulting the record, I haven't searched these records beyond June 23d, 1904.

XQ. 33. Referring to page 115 of the book you produced, please state whether there does not appear on that page an entry under date of June 27th, 1904, reading as follows:

"Tea Tray Co. 1 Morning-Glory Horn=XV Crating VA"?

By Mr. BLOUNT.—Question is objected to as inquiring into matters not inquired of in direct examination and on the further ground that page 115 of the book referred to has not been offered in evidence and protest is made against complainants' counsel reading into the record the matter which he has in his question.

A. The entry does. Yes, sir.

XQ. 34. Referring to the entry under date of September 2, 1904, at the bottom of page 145, please

(Deposition of Wm. J. Elwell, Esq.)

state whether it is not a fact that on that date your company bought a considerable number of the [638] flower type from the Tea Tray Company?

By Mr. BLOUNT.—Same objection and the question is also objected to as immaterial, irrelevant and incompetent.

A. 12 horns.

XQ. 35. Is it not a fact within your general knowledge that from the end of 1904 or thereabouts, a number of manufacturing companies put upon the market in large quantity the flower type of horn for phonographs?

By Mr. BLOUNT.—Objected to as inquiring into matters not inquired on direct examination and as being irrelevant, immaterial and incompetent.

A. I have simply hearsay knowledge, without any specific knowledge.

XQ. 36. Is it not a fact that your company commenced in the fall of 1904 and continuing down to practically the present time has purchased large quantities of the flower type of horn in place of the old B. and G. or old all brass horns that you had purchased prior to the introduction of the flower type?

By Mr. BLOUNT.—Same objection.

A. If I understand that question rightly you ask me whether we had purchased flower horns in place of B. and G. or all brass horns? If this is the case, I answer no.

XQ. 37. Is it not a fact that subsequent to the fall of 1904 and continuing for many years thereafter

(Deposition of Wm. J. Elwell, Esq.)

you purchased large quantities of the flower type of horn?

By Mr. BLOUNT.—Same objection.

A. That question I couldn't answer definitely without reading over my book of stock received.

XQ. 38. Is it not a fact that the popular type of horn since early in 1905 has been the flower type of horn.

By Mr. BLOUNT.—Same objection and also objected to as calling for a conclusion. [639]

A. Of recent years the popular horn has been the flower type.

By COMPLAINANT'S COUNSEL.—In view of the request made by defendants' counsel regarding the stock-book of Heppe & Son, complainants' counsel is willing to stipulate, that a copy of page 114 or of the particular entry on that page referring to the flower horn may be spread upon the record with the same force and effect as the original stock-book in evidence and that the original book may be withdrawn provided that complainants' counsel may have access to that book if desired, at reasonable times and upon reasonable notice.

Defendants' counsel agrees to the proposition of complainants' counsel and the original exhibit is therefore withdrawn upon the conditions stated and a copy of the flower horn entry on page 114 is now spread upon the record as follows, and is marked "Defendants' Exhibit, Page 114 of Stock-book of Heppe & Son":

[Defendants' Exhibit, Page 114 of Stock-book of
Heppe & Son.]

Jun. 23, 1914.

Hawthorne & Sheble

1 #03024 Flower Horn

1 #02824 " "

[Written in pencil over face of above entry:] "E"

XQ. 39. Do I understand that the entry above offered in evidence represents your first knowledge of the flower type horn made by the Hawthorne & Sheble firm or company? A. It does not.

XQ. 40. Did you personally receive this letter of April 15, 1904, of Hawthorne & Sheble Mfg. Co., which has been offered in evidence?

A. Not directly; it came through in the general way that mail comes through in the house and possibly reached me within half an hour after its delivery.

XQ. 41. Have you at the present time any recollection of receiving this letter apart from the fact that you find it in your files and therefore assume that you must have received it like other letters in your files?

A. I have no definite knowledge, other than finding it in my files. [640]

XQ. 42. Are you sure that this letter was actually brought to your attention to which you had knowledge of the flower horns of Hawthorne & Sheble referred to therein prior to your receipt of the horn on the 23d of June, 1904?

A. I had prior knowledge of it from hearsay. By it, I mean the flower horn.

(Deposition of Wm. J. Elwell, Esq.)

XQ. 43. Prior to the receipt of the flower horn on June 23, 1904, had you actually examined any flower horn made by the Hawthorne & Sheble Co.?

A. To the best of my knowledge I saw and examined a flower horn made by Hawthorne & Sheble prior to the receipt of the horns mentioned on page 114 of the stock receipt book.

XQ. 44. About how long before June 23d, 1904, have you seen the first flower horn made by Hawthorne & Sheble?

A. Possibly three or four months.

XQ. 45. Did you at any time prior to your first examination of a Hawthorne & Sheble flower horn which you say was possibly two or three months before June 23d, 1904, know of a flower horn that was being offered for sale by Bettini & Co., in New York?

A. I never knew that Bettini had a flower horn.

XQ. 46. Did you, in the latter part of 1903, or early part of 1904, know of a concern called the Lily Horn Company? A. I did not.

XQ. 47. Did you, prior to the date that you say you first saw the flower horn made by Hawthorne & Sheble Company, see or hear of a flower horn made by a man named Nielsen?

By Mr. BLOUNT.—Question objected to as calling for hearsay evidence.

A. I did not.

XQ. 48. Did you prior to the time when you saw the Hawthorne & Sheble flower horn as above stated by you, see a flower type horn on the market made by any other concern? [641]

(Deposition of Wm. J. Elwell, Esq.)

A. To the best of my knowledge the only flower horn I ever saw prior to that time was made by Hawthorne & Sheble.

Cross-examination closed.

No redirect examination.

Deposition closed, signature of witness and certificate of examiner waived.

(Title of Court and Cause.)

Certificate of Notary [as to Deposition of William J. Newell].

State of Pennsylvania,
County of Philadelphia,—ss.

I, Alexander Park, a notary public in and for the State of Pennsylvania, city and county of Philadelphia, do hereby certify that William J. Elwell, was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and was carefully examined; that his deposition was reduced to typewriting by C. A. Witmer, under my personal supervision, and by no other person, in the presence of said witness, William J. Elwell, from the statements of said witness; that the deposition of said witness was taken in the presence of counsel for both and each of the parties in the above-entitled suit, Searchlight Horn Co. v. Pacific Phonograph Co., who waived the signature of said witness to his deposition and waived the reading of said deposition by said witness and waived the examiner's certificate thereto; that said deposition was taken pursuant to notice at the time and place stated above; that plaintiff was

represented at the taking of such deposition by Mr. Frederick S. Duncan and that defendant was represented by Mr. Frederick A. Blount as stated above in said deposition; that the several exhibits were [642] offered in evidence and marked as specially noted in said deposition, that by consent of counsel the original exhibits were withdrawn and copies thereof spread upon the record in said deposition, as stated in the said deposition; and that I am not of counsel or attorney to either of the parties in the above-entitled suit of Searchlight Horn Co. v. Pacific Phonograph Co., nor interested in the event of this cause.

Dated this 21st day of October, 1913, at the city and county of Philadelphia, State of Pennsylvania.

ALEXANDER PARK, (Seal)

Notary Public,

705 Witherspoon Bldg., Philadelphia.

Commission expires Feb. 6, 1917.

[Endorsed]: No. 18. Filed October 25, 1913.
Walter B. Maling, Clerk. [643]

[Proceedings Had June 15, 1915, 10 A. M.]

In the District Court of the United States for the District of New Jersey.

No. 394.

SEARCHLIGHT HORN COMPANY,

Complainant,

vs.

VICTOR TALKING MACHINE COMPANY,

Defendant.

Deposition on final hearing taken on behalf of plaintiff at Room 723 Crocker Building, in the city and county of San Francisco, State of California, beginning Tuesday, June 15th, 1915, at 10 o'clock A. M., under the rules of practice in the Courts of Equity of the United States and the Statutes of the United States in that behalf made and provided, pursuant to notice heretofore served on defendant's attorney, and hereunto annexed; the same being taken before Herbert A. Bennett, a notary public, duly appointed and qualified under the laws of the State of California, the notary mentioned in said notice.

Present: JOHN H. MILLER, Esq., Counsel for Plaintiff.

N. A. ACKER, Esq., Specially Appearing
on Behalf of Messrs. Fenton & Blount,
Counsel for Defendant. [644]

By agreement of counsel for the respective parties the taking of depositions aforesaid is postponed until Thursday, June 17th, 1915, at 10 o'clock A. M. [645]

Thursday, June 17, 1915.

[Deposition of Baldwin Vale, for Plaintiff.]

BALDWIN VALE, being duly sworn, testifies as follows:

Mr. MILLER.—Q. State your name, age, residence and occupation.

A. Baldwin Vale; age, 39; residence, San Francisco, California; occupation, patent solicitor.

Q. How long have you been a patent solicitor?

A. Twenty years.

Q. Have you ever testified as an expert in patent cases?

(Deposition of Baldwin Vale.)

A. I have; I have testified in the case of Searchlight Horn Company vs. Sherman, Clay & Company, and others.

Q. You mean other cases besides that?

A. Other cases besides that.

Q. State briefly your qualifications enabling you to testify as an expert in a patent case.

A. By way of qualifications, I have been a patent solicitor for twenty years, as stated, in which profession it has been my duty to draw applications for patents for submission to the various patent offices of the world, and in this connection I have obtained a wide knowledge of the various arts and crafts, and in addition to that, I served an apprenticeship as an electrician and as a mechanical metal worker; have owned and operated my own shops and factories and have superintended the factories of others in the manufacture of agricultural implements, and the general class of manufacture involving the various commercial forms of metal, including sheet metal.

Q. Mr. Hunter, who has testified as an expert witness on behalf of the defendant, in his deposition says, that the intent and purpose of the Nielsen invention as shown in the Nielsen Patent in suit was to provide such rigidity to the [646] horn structure as would be sufficient to prevent vibrations of the horn. In other words, that his object was to eliminate vibrations of the horn. What have you to say in answer to that proposition?

Mr. ACKER.—The question is objected to as incompetent, irrelevant and immaterial, and it is not

(Deposition of Baldwin Vale.)

a proper statement of the testimony of the expert witness Hunter, and counsel is requested to read the testimony of the expert Hunter to which he directs attention; furthermore, the question is objected to as leading.

A. Shall I answer the question?

Mr. MILLER.—Q. Yes, go ahead.

A. This is an evident misconception of the intent of the Nielsen invention. Nielsen's object and intent is very clearly set forth in his patent; the object being to eliminate or minimize the mechanical metallic sounds set up in horns of this type. There is no suggestion in the patent that his primary object was the formation of a horn of great rigidity, or to eliminate vibrations. It would be practically impossible to construct a horn in such a manner as to eliminate vibrations.

Q. Please point out in the specifications of the Nielsen Patent what is there stated to be the object of the invention?

Mr. ACKER.—The question is objected to on the ground the patent is the best evidence of what is stated in the patent and what the object of the invention was; it does not call for the testimony of an expert as to the written document, or relative to the stated object.

A. In the Nielsen Patent, No. 771,441, dated October 4th, 1904, the paragraph on page 1, beginning with line 11, I will quote: "The invention relates to the horn of a phonograph [647] or other machine of this class; and the object thereof is to provide a

(Deposition of Baldwin Vale.)

horn for machines of this class which will do away with the mechanical, vibratory, and metallic sound usually produced in the operation of such machines and also produce a full, even, and continuous volume of sound in which the articulation is clear, full and distinct." I will call particular attention to the fact that he speaks of "mechanical, vibratory and metallic sound." He further discloses his object in lines 57, 58, 59 and 60, in which he states: "And it is the construction of the body portion of the horn as hereinbefore described that give thereto the qualities which it is the objects of this invention to produce."

There is no hint in this matter read nor in any other part of the patent that he intended to eliminate vibrations, or to construct a horn with rigidity as the primary object. I cannot improve upon his words in stating the object of the invention.

Mr. MILLER.—Q. Now, state whether or not the object of the invention, as quoted by you from the patent, was actually accomplished by Nielsen by means of the construction therein shown?

Mr. ACKER.—The question is objected to as incompetent, irrelevant and immaterial, and on the further ground that this witness has not been proven to possess the qualifications requisite to testify to matters of this kind.

Mr. MILLER.—Q. Read the question, Mr. Reporter.

(The Reporter reads the question.)

A. It is my opinion that Nielsen's construction did accomplish the objects intended and as set forth in

(Deposition of Baldwin Vale.)

his specifications. [648] The construction of the horn after the manner of Nielsen, formed by a multiplicity of narrow strips joined at their edges to form a horn substantially bell-shaped, flaring outwardly, the flare more abrupt near the outer or bell end, and having longitudinal ribs on the exterior of the horn would eliminate vibrations of wide amplitude and substitute therefor vibrations of narrow amplitude, and form a horn that would not introduce into the sound passing there through, any noises incidental to the vibration of the horn. The vibrations of narrow strips joined in the manner described and provided with ribs on the outside in a horn of that shape would be of such small amplitude that any sound or noise created thereby would be so weak that such sound would not be introduced into, or adulterate the music or other desired sound passing through the horn. This fact is best evidenced by the general adoption of the Nielsen horn when it was placed on the market, and which superseded practically every other form of horn then in use in the trade.

Mr. ACKER.—I move to strike the latter part of the answer from the record, as not being responsive to the question and as calling for a mere expression of the witness on matters relative to which he has no knowledge.

Mr. MILLER.—Q. In the doctrine or science of sound what relationship does the amplitude of the vibrations of the sounding body have toward the character of the sound itself?

A. The amplitude of the vibrations determines the

(Deposition of Baldwin Vale.)

intensity or loudness of the sound. A vibration of wide amplitude would cause a louder sound than a vibration of small amplitude. [649] This is evidenced in all stringed instruments, and by way of example I might cite that if a banjo string, or any mechanical string that is confined at both ends, is plucked strongly, the vibration of that string on both sides of its center will be wide in proportion to the length of the string, and the harder it is plucked the wider the amplitude of vibration, the louder the sound and the greater its carrying power and all other incidental facts. On the other hand, in a similar string of less length the vibrations would be of very much less amplitude; of less carrying power and less sound. In metal, taking a sheet of metal of say one square foot and striking it a blow, it would vibrate on both sides of the center in amplitude proportionate with the strength of the blow struck, and a smaller sheet similarly struck would have vibrations of less amplitude and consequently would make less sound.

Mr. ACKER.—Q. Will you repeat the question to the witness, Mr. Reporter?

(The reporter reads the question.)

Mr. ACKER.—I move to strike the answer from the record as not being responsive to the question.

Mr. MILLER.—Q. Are you familiar with the horns of the old art prior to Nielsen's invention, generally referred to as the B. & G. horn, consisting of a conical metal tube with a flaring bell attached to the end of it?

(Deposition of Baldwin Vale.)

Mr. ACKER.—The question is objected to on the ground that it is leading.

A. I am familiar with the type of horn known as the B. & G. Phonograph Horn.

Mr. MILLER.—Q. How long, approximately, have you been [650] familiar with horns of that character?

A. I cannot fix the date exactly when I saw the first horn of the B. & G. type, but I think it was about 1896 or 1897.

Q. Now please point out what differences, or illustrate the differences, if any, between the vibrations caused in a horn of the B. & G. type by the passage of music through it and the vibrations caused in the sectional metal horn of the Nielsen type by the passage of the same music through it?

Mr. ACKER.—The question is objected to as incompetent, irrelevant and immaterial.

A. The B. & G. type of horn being constructed in the body portion of one strip, which was the general practice, would set up vibrations of wide amplitude because of the length of the strip from edge to edge, and because of the peculiar shape of the bell, which was of a separate piece joined to the body portion at the big end, being of one piece and of relatively large size said bell would set up vibrations of its own of wide amplitude. The sound passing through such a B. & G. type of horn would be interfered with, or distorted, or adulterated by the vibrations of wide amplitude in the horn that would create sounds or noises of sufficient volume or amplitude to distort or

(Deposition of Baldwin Vale.)

interfere with the sound waves passing through the horn. On the other hand, a horn of the Nielsen type constructed on a multiplicity of strips tapering outwardly and joined at their edges and provided with ribs running longitudinally of that horn on the exterior, and the horn being shaped similarly to a bell with the flare or taper abrupt near the outer end, the vibrations set up in these narrow strips would be of relatively narrower [651] amplitude, and so narrow that any sound, if any, emanating from the vibrations of these strips, would be so weak that it probably would not interfere audibly with the sound passing through the horn. In addition to the vibrations of small amplitude, due to the narrowness of the strips forming the horn, the shape of the horn and the ribs would contribute to the excellence of the result of passing the music or other desired sound through a horn of this Nielsen type.

Mr. MILLER.—Q. Mr. Hunter also says in his deposition that Nielsen contributed nothing of value to the art by his patent, which is in suit here. What have you to say on that subject as to whether or not Nielsen contributed anything to the art?

A. That is merely Mr. Hunter's opinion with which I differ entirely, and my opinion is backed up by the adoption by the trade of the Nielsen type of horn in preference to any other of then existing horns.

Mr. ACKER.—I move to strike the latter part of the answer from the record on the ground that there has not been any proof on the part of the qualifica-

(Deposition of Baldwin Vale.)

tions of this witness relative thereto.

Mr. MILLER.—Q. I find in the specifications of the Nielsen Patent the expression “Tapers outwardly” as applied to the body portion of the horn, the language being: “The main part a of the horn is bell-shaped in form and tapers outwardly gradually,” and so forth. Please state what is meant in the art by the expression “tapers outwardly”?

A. It means that the horn tapers outwardly in plan; that is, a silhouette of the horn would show it tapering outwardly, one end being wider than the other. [652]

Q. I also find in the patent the expression: “Outwardly directed flanges” as applied to the flanges connecting the metal sections together and forming ribs on the outside. State what is meant by the expression “outwardly directed flanges”?

Mr. ACKER.—I will ask counsel to state in the record wherein the language referred to in the last question appears in the patent.

Mr. MILLER.—It appears in claim two of the patent.

Mr. ACKER.—The question is objected to as incompetent, irrelevant and immaterial, and as calling for the witness to construe the expressions of the claims of the patent, which is the sole province of the Court and not of the witness; and I will add the further objection that it is objected to on the ground as being leading.

A. The strips that form the horn have flanges bent up at their edges. The expression means that these

(Deposition of Baldwin Vale.)

flanges extend outwardly with reference to the interior of the horn and are on the outside or exterior of the finished horn.

Mr. MILLER.—Q. In the drawing and description of the Nielsen Patent the outwardly directed flanges are there shown as being formed by bending the adjoining edges of two pieces of metal at right angles and abutting them together. By what name is that form of joining metals known in the sheet-metal art?

A. In the sheet-metal art that is known as a butt seam.

Q. Now, could any other form of seam be used to join those strips together in a Nielsen horn which would have outwardly directed flanges, and if so, please describe the same?

A. There are many forms of seam and there were many forms of [653] seam available to Nielsen in the sheet-metal art at that time, and long prior to Nielsen in which these strips could have been joined by a seam having outwardly directed flanges, the flanges being joined together in a variety of ways. In fact, most seams of sheet metal start with outwardly directed flanges and the flanges are interlocked and joined together in many ways.

Q. Are you familiar with the seam in the sheet-metal art known as the lock seam?

A. I am familiar with the lock seam, having made a great many of them with my own hands and also with my own hands in connection with machinery made for the purpose.

(Deposition of Baldwin Vale.)

Q. You may state briefly how a lock seam is formed between two pieces of metal.

A. The simplest description probably of a lock seam is to form oppositely disposed hooks on the edges of the two pieces of metal to be joined together, interlock these hooks and flatten the seam. Another manner is to provide outwardly extending flanges on the edges of the two strips to be joined, one of your flanges being longer than the other; then butt these flanges together and bend the longer flange down over the narrower one and then bend them both over and flatten down against the surface of the strip they overlie. There is another form of lock seam known as a double lock seam, called for short in the trade very often a double seam. This is formed as described in connection with the strips having upwardly or outwardly directed flanges, one longer than the other; the long flange being bent down over the shorter one and then both flanges,—there being then three thicknesses—are bent between the outer edge and the surface of the strip, [654] and then flattened down on to the strip over which they overlie. This gives a double locking of the flanges and is generally used where a hermetic seal or rigid rib is desired.

Q. Please compare the rigidity of the lock seam with the rigidity of a butt seam, assuming, of course, in each case the seam is made in the best possible manner known to the art?

Mr. ACKER.—The question is objected to as incompetent, irrelevant and immaterial.

(Deposition of Baldwin Vale.)

A. The rigidity of a butt seam formed of abutting flanges and a lock seam formed as described, about an equal amount of metal being used in each form of seam, would be equally rigid and equally stiff.

Mr. MILLER.—Q. As a mechanic skilled in the art, what would you say as to the mechanical equivalency or nonequivalency of a lock seam and a butt seam for joining two pieces of metal together in reproducing horns?

Mr. ACKER.—The question is objected to as incompetent, irrelevant and immaterial.

A. I would say that they were mechanically equivalent, as they are alternatives, and a mechanic would choose the form of seam in accordance with the desired result. They are both old in the trade and have been available for the purpose probably for many years prior to Nielsen.

Mr. MILLER.—Q. Mr. Hunter in his deposition says that in his opinion the Nielsen horn as shown in the Nielsen Patent possesses no advantages over the old B. & G. horn. Please state what you have to say on that point, and whether or not in your opinion the Nielsen horn does possess or does not possess any advantages over the old B. & G. horn.

Mr. ACKER.—The question is objected to on the ground [655] that the witness has not proven such qualifications requisite to respond to the question.

A. I disagree with Mr. Hunter, and it is sufficiently evident to a layman, or anyone except a deaf man that the Nielsen horn is superior acoustically in

(Deposition of Baldwin Vale.)

every particular to the B. & G. type of horn. The B. & G. type of horn is patterned after a trumpet or a form of wind instrument that was intended to set up vibrations of wide amplitude for the purpose of creating a loud sound or noise, and this inherent fact in that structure would render a horn of the B. & G. type practically unsuited for the purpose of amplifying or working in connection with a talking or mechanical apparatus in which it was intended that the sound propagated by the machine should be delivered to the hearer unadulterated by any sounds that might be created by the horn.

Mr. MILLER.—Q. What distinction is there between musical instruments of the horn type and a reproducing horn for a talking machine. In other words, what is the primary object of the musical horn?

Mr. ACKER.—The same objection as to the previous question.

Mr. MILLER.—Q. What is the primary object of the musical horn and the primary object of the reproducing horn?

A. The primary object of a musical horn such as a cornet, trombone or like instrument is to translate the vibrations of the lips of the player that give no sound in themselves and to translate those mute vibrations into musical notes that are created in and by the vibrations of the horn. In contradistinction it is the function of a phonograph horn to act as a vehicle for amplifying or making more audible [656] the sounds that are transmitted through it

(Deposition of Baldwin Vale.)

from the diaphragm of the phonograph. Obviously it is undesirable that the horn set up any vibrations audible to the hearer that would mix with or in any wise distort the sound waves passing through it and delivering the music or speech propagated by the diaphragm of the talking machine. A sound wave might be likened unto a bubble that might be kept afloat and directed on its course by gently tapping it or striking it blows of small amplitude, and on the other hand a blow of wide amplitude or of any great violence would distort or burst the bubble. So it is with a sound wave passing through the horn of a phonograph, a multiplicity of vibrations of small amplitude would direct or convey the sound wave on its course without distortion or adding to it any vibrations that would adulterate its purity. On the other hand, a horn through which the sound was passing that made vibrations of great amplitude would distort the sound waves in a manner to destroy the purity to the ears of the hearer.

Q. Can you refer to any official authority as sustaining you in any of the facts which you have given in regard to the mechanical construction of the horn shown in the Nielsen Patent and the terms of the art therein shown or referred to, and if so, please state what it is?

A. The first official confirmation of my views that occurs to mind is the charge of Judge Van Fleet to the jury in the case of Searchlight Horn Company vs. Sherman, Clay & Company, which sets forth the matter in better form and in as few words as seems

(Deposition of Baldwin Vale.)

possible, and I should like to quote that charge in answering the question.

Mr. ACKER.—I move to strike the answer from the record [657] as not being responsive to the question.

Mr. MILLER.—Q. Please refer to the transcript of record in that case and read from it into the present record the portion of the charge which you desire.

Mr. ACKER.—The question is objected to as incompetent, irrelevant and immaterial, and as not being the expression of a recognized authority on this subject.

A. I refer to the transcript of record in the case of Sherman, Clay & Co. vs. Searchlight Horn Company, in the Circuit Court of Appeals for the Ninth Circuit, No. 2306, at page 271:

“The invention consists of a horn for phonographs or similar instruments, and its objects are, as stated in the patent, to do away with the mechanical, vibratory and metallic sound usually produced in the operation of such machines, and to produce a full, even and continuous volume of sound in which the articulation is clear, full and distinct. The horn is constructed of metal strips secured together at their longitudinal edges by a seam, which produces ribs on the outside of the horn. In the patent this seam is shown as being a flanged or butt seam, and these flanges extend outwardly, thereby forming longitudinal ribs on the outside of the horn; the sheet-metal strips are curved or flexed outwardly,

(Deposition of Baldwin Vale.)

but this curve is more abrupt adjacent to the outlet of the horn or the mouth or large end, thereby producing a bell-shaped horn with a flaring outlet. This is the mechanical structure described in the specification, and after specifying the method of construction the patentee had added the following clause: [658]

‘My improved horn may be used in connection with phonographs or other machines of this class and changes in and modifications of the construction described may be made without departing from the spirit of my invention or sacrificing its object.’

“Now, the invention actually covered by the patent does not reside in the particular form of the seam which joins the metal strips together. If the same result produced by the flanged seam shown in the patent as joining the metal strips together is obtainable by any other usual form of seam known at the time of Nielsen’s invention which operates in substantially the same way to produce the same result, then the substitution of such a seam would not be a departure from the invention, but would be within its real and true scope. The invention of Nielsen consists in the production of a horn for phonographs and similar instruments consisting of a combination of the various elements hereinabove described by me, and the essential characteristics of the Nielsen horn are the following:

1. It must be composed of a multiplicity of metal strips secured together at their longitudinal edges by a seam.

(Deposition of Baldwin Vale.)

2. This seam must be of such construction as to produce longitudinal ribs on the outer surface of the horn.

3. The strips are narrower in cross-section at the inner end than at the outer end.

4. The strips must curve outwardly from the inner to the outer end, but the curve is more abrupt adjacent the outer end.

Now combining these elements together in this way, [659] Nielsen produced a horn for phonographs and similar machines larger at one end than the other and having substantially a bell-shape and abruptly flaring outlet made up of longitudinally arranged metal strips secured together at their outer edges by a seam of such character as to produce longitudinal ribs on the outer surface.

“This is an explanation of the invention in colloquial language rather than in technical form, and I instruct you that it correctly represents the invention as protected by the claims in issue of the Nielsen Patent.”

Direct examination closed.

Cross-examination.

Mr. ACKER.—Q. Mr. Vale, you stated that you entered into your profession as a solicitor of patents at what time? A. Twenty years ago, in 1895.

Q. You were then in partners with a party by the name of Murdock? A. Yes, sir.

Q. What were your duties at such time in the office? A. I was a solicitor.

Q. Were you a solicitor or draughtsman?

(Deposition of Baldwin Vale.)

A. I was both.

Q. To what time did you remain in partnership or were associated with Mr. Murdock?

A. I think until the year 1902, when we dissolved; Mr. Murdock having been absent from San Francisco for something like two years.

Q. And when did that partnership commence?

A. In 1895.

Q. What were you engaged in prior to 1895?

A. I was with the Edison Light & Power Company.

Q. What were your duties in that company?

A. I was preparing arc lamps, winding helix coils and transformers.

Q. After the dissolution of the firm—I believe it was [660] Murdock & Vale, was it not?

A. Yes, sir.

Q. After the dissolution of the firm in 1902, did you then continue the soliciting business?

A. I have never dropped the soliciting of patents during all of my various other business ventures.

Q. Did you continue in business in this city as a solicitor of patents after the dissolution of the firm of Murdock & Vale? A. I did.

Q. Up to what time?

A. Up to the present time.

Q. Continuously?

A. Not in the city of San Francisco.

Q. Were you not employed in a harvest firm in Stockton?

A. I was employed in a harvest firm in Stockton.

(Deposition of Baldwin Vale.)

Q. When did you take employment with them, in what year? A. 1911 or 1912.

Q. And you remained with that firm for how long?

A. I remained as their superintendent for one year and am still in their employ.

Q. That is, you took your employment with them in 1911? A. Yes, sir.

Q. You are still in their employ?

A. I am still in their employ.

Q. In what capacity?

A. As a patent solicitor, an expert.

Q. Do you mean that you are retained at the present time in patent matters? A. Yes, sir.

Q. And to take out patents for them as applied to you? A. Yes, sir.

Q. You are not employed by the company as an employee for experimenting to take out patents?

A. My employment involves matters that do not relate to this present case, and which I cannot discuss. [661]

Q. Answer the question or not as you please. When did you return to San Francisco to engage in the patent soliciting business? A. In 1912.

Q. And since that time you have followed the profession of a solicitor of patents? A. I have, yes.

Q. Please state what experience you have had in connection with the phonographic business in connection with the manufacture of phonographic machines.

A. Early in my experience as a patent solicitor I had both a model maker and a client who were oper-

(Deposition of Baldwin Vale.)

ating on talking machines and I was witness to a number of experiments they made as to the shapes of horns and heard their discussions and heard records made and reproduced.

Q. Where did you see records made?

A. In the old Emma Spreckles Building.

Q. Were they made by any company?

A. They were made by a company that I do not know the name of. I think that the firm was Peter Bacigalupi.

Q. You are not sure of that, are you?

A. I am not positive of that.

Q. Is it from such time that your knowledge of the phonographic art dates? A. Yes, sir.

Q. And that knowledge was obtained by seeing devices made as to which you were taking patents on for said parties?

A. Yes, sir. That is not the extent of my experience with talking machines.

Q. What experience did you have other than that which you have just stated?

A. I have followed the development of the art as a matter of professional duty and curiosity, naturally taking an interest in that as well as other arts [662] and have been one of the severest critics of talking machines, as I never liked them and have always looked forward to the time when improvements would be made that would make them more desirable. I have used them in connection with dictation in my business and at one time had several inventions connected with them which I did not pat-

(Deposition of Baldwin Vale.)

ent. I have had occasion as a patent solicitor to prosecute applications on microphones and other telephonic instruments with a view to electrical amplifying sound transmitted over wire in which nearly every possible or known form of horn was used and many hydrid forms tested.

Q. Tested by you?

A. Tested by me and in my presence.

Q. And it is from the knowledge, I understand, so gained by you in your soliciting business that you qualify yourself as an expert in this line?

A. I do, and, in addition, to my knowledge of acoustics and sheet metals.

Q. When did you first make a comparison if at all between the Nielsen horn as a reproducer of sound and the B. & G. horn which you have testified to as a reproducer of sound?

A. In connection with my testimony in this case I made the first actual comparison.

Q. Please state how those comparisons were made. A. Those were audible comparisons.

Q. That is, you placed the Nielsen horn on a phonograph and listened to the reproduced sound and afterwards you placed a B. & G. horn on the phonograph and listened to the reproduction of the sound?

A. That is correct with the qualification that the same record was used in connection with the test on both horns and the same parts of the same record were tested on both [663] horns.

Q. And what was the test in duration of time?

A. Probably an hour or hour and a half.

(Deposition of Baldwin Vale.)

Q. Each horn? A. Both horns.

Q. Were different machines used for testing the horn, or the same machine?

A. I just stated the same machine was used on the same record in the same part of the record in the same room and at the same speeding of the machine.

Q. Were any of the tests made with the horns used on different machines, the machines being in operation at the same time or simultaneously.

A. I would not attempt a test like that because you could not test two horns operating simultaneously; they would conflict.

Q. Then, as I understand, you did not make any such test? A. No, sir.

Q. Please explain in detail the mechanical vibrations which set up in a horn when used as a reproducer of sounds in talking machines?

A. One form of mechanical vibration that often interferes with the horn is transmitted to it by induction. The mechanical grinding and scraping of the phonograph is transmitted throughout the whole metallic structure of the machine and reaches the sound by a metallic contact. In addition to this is the scratching and scraping of the reproducing needle on the surface of the record which is also transmitted to the horn and sets up a mechanical vibration through it, its molecular structure.

Q. What are the vibratory sounds which are set up in the reproducing horn?

A. Vibratory sounds would be set up in the horn

(Deposition of Baldwin Vale.)

also by the sound waves propagated by the talking [664] machine and passing through the horn.

Q. How do the vibratory sounds differ from the mechanical sounds?

A. Probably in the matter of the amplitude.

Q. Do you know? A. Yes, sir.

Q. How do they?

A. Take out "probably" from my answer.

Q. And your answer stands with the word "probably" taken out? A. Yes, sir.

Q. How do the metallic sounds differ from the mechanical sounds?

A. Well, the mechanical sounds are metallic.

Q. Then the mechanical and the metallic are the same? A. Yes, sir.

Q. That is your understanding? A. Yes, sir.

Q. How is one distinguished from the other during the operation of the machine and the use of the horn in connection therewith?

A. They are distinguished by the ear of the hearer.

Q. Which sounds of the three mentioned predominated, if any at all, in connection with the test you stated to have been made by you in the use of the B. & G. horn? A. Which sounds predominated?

Q. Yes.

A. The mechanical sounds set up and inherent in the structure of the horn as against the mechanical or metallic sound transmitted thereto by the machine.

Q. Which predominated in the reproduction of

(Deposition of Baldwin Vale.)

sound through the use of the horn as to which you have testified you made experiments?

A. Both the metallic and the mechanical sounds were sufficiently neutralized or minimized in the Nielsen horn as not to be disagreeably noticeable in the production of the music passing through the Nielsen horn.

Q. Did you notice them at all?

A. In occasional parts [665] of the record they would be slightly noticeable.

Q. Likewise the vibratory sound?

A. Well, all sounds are vibratory and the vibrations in the Nielsen horn are of such slight amplitude that they did not interfere with the propagated sound passing through the horn.

Q. As I understand from your testimony the only tests you have made were the ones referred to by you and as lasting for a period of time of probably an hour and a half?

A. I have made other tests of all of the exhibits that were produced in the Sherman, Clay & Company case so far as I could audibly and by rapping and otherwise setting these various horns in vibration and testing them by holding my finger on various parts of the horn and also by means of holding a pencil between my teeth and applying it to various parts of the horn set in vibration in various ways.

Q. Then your last answer is that you made tests of all the exhibits introduced in the Sherman, Clay & Company case. Did you make tests of the B. & G. horn introduced in evidence in said case where the

(Deposition of Baldwin Vale.)

body of the horn was made of two strips of metal?

A. I made tests of such a horn; I cannot say now I noticed at the time whether it was marked as an exhibit, or not. It was a B. & G. horn in Mr. Miller's office, composed of a body portion black and a bell portion brass.

Q. In that horn the body portion was made of one sheet of metal, was it not?

A. It was made of one or two, I am not positive now.

Q. Well, to refresh your memory there were two horns introduced in evidence, one of which the body portion was made of a single piece of metal and one of which the body portion was made of two pieces of metal. Did you make a test of that [666] horn?

A. I recall at the time there were two horns introduced and the reason I hesitated was because I did not know which one I had tested in this manner. I did not deem the fact of the horn being one piece or two relatively large pieces made very much difference.

Q. Did it make a difference between those two horns in the reproduction of sounds as far as minimizing the mechanical, vibratory and metallic sounds?

A. As I have stated in my testimony to-day, the amplitude of vibration in two strips would be less than the amplitude of vibration in a single strip equal in area to the two strips. Every seam and rib added minimizes the amplitude of the vibrations

(Deposition of Baldwin Vale.)

within the horn just that much. A multiplicity of strips and seams would minimize it just that much, just about that greater in extent. The smaller the strip the less the amplitude of vibration; the wider the strip the greater the amplitude of vibration.

Q. Have you any knowledge as to what is known in the art as a recording horn? A. Yes, sir.

Q. How does a recording horn differ from a reproducing horn?

A. A recording horn is generally used, so far as my knowledge extends—it consists of a trumpet-like smaller end with a flaring polygonal body or larger end. I saw such a horn in the studio of the Columbia Phonograph Company and was informed that that is the type of horn in general use by them. The horn was formed of sheet zinc.

Q. When did you see that horn for the first time?

A. I saw that horn about 18 months ago.

Q. Did you make any tests of the horn introduced in the Sherman, Clay and Company case, which you referred to, as an [667] exhibit, known as the Villy horn?

A. I do not recall that a Villy horn was admitted in evidence.

Q. You have no knowledge of a Villy horn being introduced in evidence?

A. It might have been, but I do not recall it to memory; there were so many exhibits introduced.

Q. You have no knowledge of the sound reproduction from the Villy horn? A. No, sir.

Cross-examination closed.

(Deposition of Baldwin Vale.)

(It is stipulated between counsel that the signature of this witness to his deposition be and the same is hereby waived.)

Mr. MILLER.—Plaintiff offers in evidence a Patent Office copy of letters patent No. 811,877, issued February 6th, 1906, to Camillus Antonette Senne of New York City, for a phonograph horn, the same to be marked Plaintiff's Exhibit Senne Patent No. 811,877, of February 6th, 1906.

Mr. ACKER.—The introduction of the document is objected to as incompetent, irrelevant and immaterial.

(The document is marked "Plaintiff's Exhibit Senne Patent No. 811,877 of February 6th, 1906.")

Mr. MILLER.—Also a Patent Office copy of United States Letters Patent No. 797,725 issued August 22d, 1905, to Charles J. Eickhorn, Assignor to the Tea Tray Company of Newark, New Jersey, the same to be marked Plaintiff's Exhibit Eickhorn Patent, No. 797,725 of August 22d, 1905.

Mr. ACKER.—The introduction of the document is objected to as incompetent, irrelevant and immaterial.

(The document is marked "Plaintiff's Exhibit Eickhorn Patent No. 797,725, of August 22d, 1905.")

[668]

Mr. MILLER.—Also a patent office copy of a design Patent No. 38,202, issued August 28th, 1906, to Charles J. Eickhorn, Assignor to the Tea Tray Company of Newark, New Jersey, on a design for an amplifying horn, the same to be marked Plaintiff's

(Deposition of Baldwin Vale.)

Exhibit Eickhorn Design Patent No. 38,202 of August 28th, 1906.

Mr. ACKER.—The introduction of the document is objected to as incompetent, irrelevant and immaterial.

(The document is marked "Plaintiff's Exhibit Eickhorn Design Patent No. 38,202 of August 28th, 1906.")

Mr. MILLER.—Also a Patent Office copy of a design Patent No. 38,273 issued October 9th, 1906, to Clement Beecroft, Assignor to the Tea Tray Company of Newark, New Jersey, covering design for a horn, the same to be marked Plaintiff's Exhibit Beecroft Design Patent No. 38,273 of October 9th, 1906.

Mr. ACKER.—The introduction of the document in evidence is objected to as incompetent, irrelevant and immaterial. (The document is marked "Plaintiff's Exhibit Beecroft Design Patent No. 38,273 of October 9th, 1906.")

Mr. MILLER.—Also a Patent Office copy of design Patent No. 38,274 issued October 9th, 1906, to Clement Beecroft, Assignor to the Tea Tray Company of Newark, New Jersey, covering a design for a horn, the same to be marked Plaintiff's Exhibit Beecroft Design Patent No. 38,274 of October 9th, 1906.

Mr. ACKER.—The introduction of the document is objected to as incompetent, irrelevant and immaterial.

(The document is marked "Plaintiff's Exhibit

(Deposition of Baldwin Vale.)

Beecroft Design Patent No. 38,274 of October 9th, 1906.'') [669]

Mr. MILLER.—Also a Patent Office copy of United States Letters Patent No. 926,235, issued June 29th, 1909, to Paul B. T. Berner, Assignor to Searchlight Horn Company, of New York, the same to be marked Plaintiff's Exhibit Berner Patent No. 926,235 of June 29, 1909.

Mr. ACKER.—The introduction of the document is objected to as incompetent, irrelevant and immaterial.

(The document is marked "Plaintiff's Exhibit Berner Patent No. 926,235 of June 29th, 1909.'')

Mr. MILLER.—Also a Patent Office copy of United States letters patent No. 829,066, issued August 21, 1906, to Walter S. Fernan for a phonograph horn, the same to be marked Plaintiff's Exhibit Fernan Patent No. 829,066 of August 21st, 1906.

Mr. ACKER.—The introduction of the document is objected to as incompetent, irrelevant and immaterial.

(The document is marked "Plaintiff's Exhibit Fernan Patent No. 829,066 of August 21, 1906.'')

Mr. MILLER.—Also a Patent Office copy of a design Patent No. 38,602 issued June 4th, 1907, to Max Steiner, Assignor to the New Jersey Sheet Metal Company of Newark, New Jersey, covering a design for a phonograph horn, the same to be marked Plaintiff's Exhibit Steiner Design Patent No. 38,602 of June 4th, 1907.

Mr. ACKER.—The introduction of the document

(Deposition of Baldwin Vale.)

is objected to as incompetent, irrelevant and immaterial.

(The document is marked "Plaintiff's Exhibit Steiner Design Patent No. 38,602 of June 4th, 1907.")

Mr. MILLER.—Also a Patent Office copy of United States Letters Patent No. 967,618 issued August 16, 1910, to [670] Joseph Adelor Danis, for a metal horn, the same to be marked Plaintiff's Exhibit Danis Patent No. 967,618 of August 16th, 1910.

Mr. ACKER.—The introduction of the document is objected to as incompetent, irrelevant and immaterial.

(The document is marked "Plaintiff's Exhibit Danis Patent No. 967,618 of August 16th, 1910.")

Mr. MILLER.—Also a Patent Office copy of United States letters patent No. 921,676 issued May 18th, 1909, to Alfred R. Cunnius for a sound-augmenting horn, the same to be marked Plaintiff's Exhibit Cunnius Patent No. 921,676, of May 18th, 1909.

Mr. ACKER.—The introduction of the document is objected to as incompetent, irrelevant and immaterial.

(The document is marked "Plaintiff's Exhibit Cunnius Patent No. 921,676 of May 18th, 1909.")

Mr. MILLER.—Also a Patent Office copy of United States letters patent No. 917,404 issued April 6th, 1909, to George Benjamin and William Handley for a phonograph horn, the same to be

(Deposition of Baldwin Vale.)

marked Plaintiff's Exhibit Benjamin and Handley Patent No. 917,404 of April 6th, 1909.

Mr. ACKER.—The introduction of the document is objected to as incompetent, irrelevant and immaterial.

(The document is marked "Plaintiff's Exhibit Benjamin and Handley Patent No. 917,404 of April 6th 1909.") [671]

State of California,

City and County of San Francisco,—ss.

I, the undersigned, Herbert A. Bennett, do hereby certify that on June 15th and June 17th, 1915, I was, ever since have been and am now a notary public in and for the city and county of San Francisco, State of California, duly appointed, commissioned and sworn under and by virtue of the laws of the State of California, and reside at the said city and county of San Francisco, State of California: That on June 17th, 1915, at the office of John H. Miller, Esq., in the Crocker Building at the city and county of San Francisco, State of California, the deposition of Baldwin Vale, to be used on behalf of plaintiff on final hearing in the above-entitled case, was duly and regularly taken before me; that the said witness prior to giving his deposition was duly cautioned and sworn to testify to the truth, the whole truth and nothing but the truth, and carefully examined; that the deposition of said witness was reduced to typewriting by me; that the signature of the witness to his said deposition was waived by counsel for both parties: that the foregoing transcript of 28

pages is a true and correct transcript of the said deposition and all proceedings had and taken in connection therewith; that at the taking of said deposition I was attended by John H. Miller, Esq., an attorney at Law, as counsel for plaintiff, who examined said witness on behalf of plaintiff, and by Nicholas A. Acker Esq., an attorney at law, representing Messrs. Fenton & Blount, counsel for defendant, who examined said witness on behalf of defendant; that the said witness was of sound [672] mind and of lawful age and testified as set forth in the foregoing transcript; that the notice hereunto annexed dated June 7th, 1915, and signed by Frederick S. Duncan, as solicitor for plaintiff and directed to Messrs. Fenton & Blount solicitors for defendant, and endorsed by said Fenton & Blount acknowledging receipt of copy June 7th, 1915, was and is the notice under which said deposition was taken; that the deposition was taken under the provisions of Sections 863, 864 and 865 of the Revised Statutes of the United States; the reason for taking the said deposition at the time and place aforesaid was that the said witness at the time of taking said deposition lived and does live more than one hundred miles from the place of trial of the cause and more than one hundred miles from any place at which a District Court of the United States for the District of New Jersey is appointed to be held by law; that at said time said witness lived and does now reside in the State of California which is more than one hundred miles from the place of trial of said cause and more than one hundred miles from

any place at which a District Court of the United States for the District of New Jersey is appointed to be held by law; that during the taking of said deposition the various exhibits mentioned in the foregoing transcript were duly and regularly offered in evidence by the plaintiff's counsel and were by me duly and regularly marked in evidence as therein appears, and by stipulation of counsel for the respective parties the same are to remain in the possession of counsel offering them, to be produced by said counsel at the final hearing of the case; that the said deposition is herewith sealed up by me and [673] directed to the clerk of the District Court for the District of New Jersey at Trenton, New Jersey.

IN WITNESS WHEREOF I hereunto set my hand and official seal at the city and county of San Francisco, in the State of California, this 25th day of June, 1915.

[Seal] HERBERT A. BENNETT,
Notary Public in and for the City and County of San
Francisco, State of California.

[Endorsed]: Filed Feb. 1, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [674]

(Title of Court and Cause.)

[Testimony on Behalf of Complainant.]

Testimony on behalf of the complainant, taken pursuant to notice under the Statutes of the United States, in such cases made and provided, on the 10th day of August, 1914, at 10:30 A. M., before Charles

Drapkin, Esq., Special Examiner, by consent of the parties, at the office of Messrs. Hunter, Anderson & Barr, No. 1001 Chestnut Street, Philadelphia, Pa.

Present: JOHN H. HILLIARD, Esq., of Counsel for Complainant.

GEORGE E. CRUSE, Esq., of Counsel for Defendants.

IT IS HEREBY CONSENTED AND AGREED by the respective parties that the testimony to be taken herein in Philadelphia may be taken stenographically and transcribed from the stenographic minutes.

The parties hereto hereby consent that Charles Drapkin set as Special Examiner herein.

[Deposition of David T. McNeil, for Complainant.]

DAVID T. McNEIL, a witness produced on behalf of complainant, being first duly cautioned and sworn, testified as follows:

Direct Examination by Mr. HILLIARD.

Q. 1. Please state your name, age, residence and occupation.

A. David T. McNeil; 45 years old; address, 62 Manheim Street, Germantown, Philadelphia, Pa.; my occupation is painter.

Q. 2. Do you know, or did you ever know, the firm of Hawthorne & Sheble? A. Yes, sir.

Q. 3. What was the business of Hawthorne & Sheble?

A. Why, making horns when I was there, making graphophone horns.

(Deposition of David T. McNeil.)

Q. 4. Did you work for them? A. I did.

Q. 5. When did you go to work for them, and how long did you [675] continue in their employ?

A. I went there either the latter end of 1904 or the early part of 1905, and I worked there until January of 1906.

Q. 6. What were your duties at Hawthorne & Sheble's when you first went there?

A. I went to work for a man named Bob Ford, and he did the work on the flower horns. Later I had charge of that department when they started to make the other horns, different kinds of horns. The first horns they were making was a sectional horn, when I went there covered with silk on the outside, and then when I got charge of the department they started to make the same kind of a horn and dipped it in lacquer and decorated it on the inside. That is what I had charge of.

Q. 7. Was that the only method that was used to paint or color the horns while you were there?

A. That is the lacquer and the painting, and they also made brass horns which they polished, and I think they made some aluminum horns, and I think they nickle-plated some horns.

Q. 8. Did you ever have any conference with Mr. Hawthorne relative to the method to be used in painting horns?

A. Why, I think I did, with Mr. Sheble and Mr. George; they brought a horn in one time to show me how it was decorated. We had trouble in packing our horns; the varnish would stick to the paper.

(Deposition of David T. McNeil.)

They brought a horn in and showed me one time how it was decorated, and it was smooth. It appeared to be burned in, and I think I asked them if they knew what it was about. I don't know the name of it, and the only information they gave me was that it was burned in the horn.

Q. 9. Do you know whether that was a horn manufactured by Hawthorne & Sheble?

A. No, sir, it was not one of their horns.

Q. 10. Do you know who manufactured it?

A. No, sir, I do not. [676]

Q. 11. When was this conference that you have spoken of, with reference to the time that you first went to work for Hawthorne & Sheble, that is, about how long after?

A. After that? Well, I should judge it was—I guess it was six months after that, all of six months.

Q. 12. How many men were working in the painting department when you first went there?

A. There were only two men; I worked for myself.

Q. 13. How many men were working in the painting department when you left?

A. Well, I had as high as fifteen or eighteen men under me—that is, painting and striping, dipping horns and putting sections on the horns.

Q. 14. How soon after you went in the employ of Hawthorne & Sheble did they begin to increase their painting force?

A. I judge it was shortly after about Ford left, and we did not work, I suppose, about a month—what was that question?

(Deposition of David T. McNeil.)

Q. 15. (Question repeated by stenographer.) How soon after you went in the employ of Hawthorne & Sheble did they begin to increase their painting force?

A. About a month. That was after Ford left. I worked for Ford about six weeks. Then I went with another man that came in on the horns; then about, I will say a month after that, I took charge and we started to make the smaller horns, and I took charge of the whole business then. That would make it three months after I went there first that I took charge.

Q. 16. Now, after that how rapidly did Hawthorne & Sheble increase their painting force?

A. How rapidly? You mean how quick was it done?

Q. 17. Yes.

A. When they first started we had a couple of extra men to dip the horns, etc., then they were making their horns I don't know whether by hand or by machinery, but later on, I suppose maybe in the course of a month or so they got a grooving machine that [677] they made the leaves that previous to that they were making by hand. I am not positive how they made them previously, but they got a grooving machine, and got them out more rapidly. After they started making this small horn, in a month to six weeks we were turning them out very fast.

Direct examination closed.

No cross-examination.

Deposition closed.

[Deposition of George Kuenstle, for Complainant.]

GEORGE KUENSTLE, a witness produced on behalf of complainant, being first duly cautioned and sworn, testified as follows:

Direct Examination by Mr. HILLIARD.

By Mr. CRUSE.—All objections to the deposition of this witness are reserved. No notice of the taking of this deposition has been given.

Q. 1. What is your name and age?

A. My name is George Kuenstle; my age is 49.

Q. 2. And what is your residence and occupation?

A. My residence is 6308 Argyle Street, Philadelphia.

Q. 3. Did you ever work for the firm of Hawthorne & Sheble, in Philadelphia? A. Yes, sir.

Q. 4. When did you go to work for Hawthorne & Sheble?

A. In 1898 or 1899, one of those two years, I am not quite sure. I was there twice; I was there first a week, and there was first another man who did not like me and I was laid off after I was there a week. Later on I was there, and I was there until Hawthorne & Sheble went up the spout.

Q. 5. When did Hawthorne & Sheble go up the spout?

A. No, I can't tell you the year exactly. It was the last pay-day [678] we had and everybody was paid off and laid off. I remember when it was; it was the second trolley strike we had, on the 30th of May. I couldn't find the year, but I have got it somewhere. I don't know whether it was 1908 or 1909;

(Deposition of George Kuenstle.)

1908 I think it was, That Saturday was the last day the people was paid off and they had to get out.

Q. 6. What was the business of Hawthorne & Sheble when you first went to work for them?

A. When I first went to work for them it was carrying cases for records, making horns, also making carrying-cases for horns, a lot of different things, odds and ends, a lot of things.

Q. 7. What was Hawthorne & Sheble's business?

A. The time I came there it was nothing but horns, brass bell horns, what I call brass bell horns. We made tin horns, and so forth, but mostly brass horns.

Q. 8. Do you know what is meant by the term, "flower horn"? A. Yes, I ought to know it.

Q. 9. What is a flower horn?

A. A flower horn represents a horn like a morning-glory. In the beginning, we called it morning-glory horn, then we called it flower horns. In the beginning, the time we started in, we called it morning-glory horns, because I remember the time we started in I brought some morning-glory blossoms from the house and showed the painters and stainers how to mix the paint and get it in natural shape.

Q. 10. Can you state when Hawthorne & Sheble first commenced to make morning-glory horns?

A. Well, that was—I couldn't tell you exactly the date; it was around 1904 or 1905, around that time; I couldn't tell you exactly the month, but it was 1904 or 1905, around that time.

Q. 11. Can you state how morning-glory horns were

(Deposition of George Kuenstle.)

constructed; that is, how were they made and put together?

A. Yes, I know a little bit of it. [679]

Q. 12. Will you do so?

A. It was made in the beginning by hand. A tin-smith was there and he had to make his pattern from another horn and he had to stay on the bench and cut it off with the scissors. It was done about six months, maybe eight months, maybe five months; I don't know how long he had to cut them, but I know he was disgusted with it, staying all day and cutting.

Q. 13. What was the name of the man who cut them out?

A. Well, I think it was the name of Charley Scheerer.

Q. 14. Can't you tell a little more definitely just how the parts of the flower horn or morning-glory horn were shaped and how they were joined together?

A. (Witness producing horn.) The first we made is what we call "scalloped," like this. (Witness refers to horn designated "Complainant's Exhibit for Identification Kuenstle Horn.") This is what we call scalloped. First we make this way, then it did not look right; then later on we made it more round. That is on the first one. Then while grooving and putting it together—we had a little grooving machine there the same as for other horns, but it did not work right on account of the shape, because the leaves had to be formed a little bit first and by the time it was shaved through the groover it lost the shape of it.

(Deposition of George Kuenstle.)

Q. 14. How many leaves, as you call them, were used by Hawthorne & Sheble in constructing their morning-glory horns when they first began to manufacture them?

A. The small ones I think was nine—eleven. That is a thing I ain't sure about. Such things I forgot. Let me see—fifteen—I couldn't tell you exactly the number of it. I know we had a great time to get them together in the beginning. I cannot tell you exactly the number of them. Maybe by this afternoon I will know all about it if I think of it.

Q. 15. Did you have a pattern or model from which to make [680] the morning-glory horns at Hawthorne & Sheble?

A. To tell you the truth, I remember very well Mr. Hawthorne coming chasing into the shop one day with a horn and he went up stairs, and I think it was in the forenoon, and dinner time Charley Scheerer and a couple of other fellows and I stuck our noses together, and one of the men said, "I wonder where he got that from." And I said to Charley Scheerer, "What have you got to do with it"? "Well," he says, "Damn it, I got to make a pattern off this damn thing. I can't get this thing apart." He was very excitable; he was German, like me, very excitable. He says, "Damn it, I got to take a pattern off this damn thing here and I can't take none off; I got to take it apart." So I guess Charley Wackes, the foreman, or I think it was Mr. Hawthorne, told him to take it apart. Then it was easy to make a paper pattern. The paper was on a piece of sheet iron and

(Deposition of George Kuenstle.)

then they had the pattern and then they started to cut.

Q. 16. When was it that Mr. Hawthorne came in with this horn as you have just told us?

A. When it was? I don't know exactly, I think it was 1903 or 1904, something like that, around that time; yes, 1903 or 1904, around that time. I don't know exactly the date and the month, but I think it was between 1903 and 1904, because we did not make any flower horns or anything like that for a good while.

Q. 17. Did Charley Scheerer succeed in making a pattern? A. Yes.

Q. 18. And what happened after that?

A. After that we started to make horns. Then Mr. Hawthorne came to me and said, "Kuenstle, if you be able to silk-finish them horns, why we make plenty money, plenty work and plenty money." I said, "All right, I will try my best and try hard for it." I started in and after a few months I had it going fine. In the beginning I had a little trouble with silk-finish. I [681] had it going find after a couple of months.

Q. 19. How long did Hawthorne & Sheble continue to cut them out by hand?

A. Well, it was only a few months, only a few months after Charley Scheerer—

Q. 20. Can you tell us about how many months?

A. I should judge about—I couldn't tell you exactly, but I think it was about five months, five or six months, something like that, maybe seven months,

(Deposition of George Kuenstle.)

but it is not less than five months,

Q. 21. What happened after that?

A. Then the leaves was punched out in the punch press.

Q. 22. You mean by a die?

A. Yes.

Q. 23. When Hawthorne & Sheble first began to make morning-glory horns as you have just told us about, what did they make them out of?

A. Dull tin, what I call bright tin, brass, and also the brass be nickle-plated; that means after they are nickle-plated flower horns.

Q. 24. Did they make them out of any other metal after that? A. No.

Q. 25. Did they ever make them out of steel?

A. No, they tried to but it did not work right and they gave it up; there were only about five or six, and it did not work right.

Q. 25. Do you know anything about where this horn (referring to Complainant's Exhibit Kuenstle Horn) came from?

A. This one is from Hawthorne & Sheble.

Q. 26. When was that made?

A. That is a horn that I experimented with to silk-cover it.

Q. 27. Do you remember when that horn was made?
[682]

A. That was one of the first lot, what I call the first lot of two or three hundred.

Q. 28. Where did you get it?

A. I got permission from the superintendent. I

(Deposition of George Kuenstle.)

told him I would take it home to experiment with it to get my silk-finish good.

Q. 29. Where has it been since you took it home?

A. In my attic.

Q. 30. All the time?

A. Yes; I did not know I had it.

Q. 31. When did you take it out of your attic?

A. I took it out of my attic yesterday.

Q. 32. When I was there to see you?

A. Yes, sir. It was *up the* attic quite a number of years; in fact, I did not know I had it any more; it was no good to me.

Q. 33. Was this horn (referring to Complainant's Exhibit Kuenstle Horn) made before or after Hawthorne & Sheble tried to make steel horns?

A. Oh, it was made before. The steel horns did not work; we couldn't get them together here (indicating); the grooves broke; as soon as you put them in the groover and tried to put them together they got loose, they couldn't work.

Mr. HILLIARD.—I offer the horn in evidence.

Same received in evidence and marked, "Kuenstle Exhibit Silk-covered Horn."

Q. 34. You have spoken about Mr. Hawthorne coming to Mr. Scheerer with a horn from which Mr. Scheerer was told to make a pattern?

A. Yes, sir.

Q. 35. Was that horn that Mr. Hawthorne brought made in the factory of Hawthorne & Sheble?

A. No, sir. He brought it from outside. From where I do not [683] know. Perhaps we will be

(Deposition of George Kuenstle.)

able to imagine it, where he brought it from, from New York or somewhere.

By Mr. CRUSE.—All of the foregoing answer, with the exception of the first sentence, is objected to as being hearsay, therefore incompetent and immaterial.

Q. 36. Before Mr. Hawthorne brought to Mr. Scheerer the horn that you have told about had Hawthorne & Sheble ever made a morning-glory horn in their factory while you were there?

A. No, sir.

Q. 37. While you were there, and before Mr. Hawthorne brought this horn to Mr. Scheerer, had Hawthorne & Sheble ever made a horn of aluminum, composed of sections or panels running the whole length of the horn and joined together with tinsmith seams?

A. Not that I know of.

Q. 38. What kind of horns were Hawthorne & Sheble making when you first went into their employ?

A. Why, they made brass, what I call brass bell horns, with steel body; the bell is brass, the body is steel; sometimes the whole horn is made out of brass; sometimes the horn is made—the bell is aluminum and the body steel, or the whole horn is made of aluminum; that is all the horns we made while I was there in the beginning, the time I first went there.

Q. 39. Did Hawthorne & Sheble at any time make what are known as "B" and "G" horns?

A. You got me guessing now.

Q. 40. Do you know what the "B. and G." horn is?

A. Maybe I know, but I don't know anything by

(Deposition of George Kuenstle.)

the name "B. and G."

Q. 41. Did you ever hear the term used, "B. and G."?

A. I heard the term used, but I cannot place it.

Q. 42. Before Hawthorne & Sheble began to make the morning-glory horns that you have told about, did they ever make a horn which [684] curved continuously from one end to the other?

A. No, not that I know of; I never saw one in the factory while I was there.

Q. 43. Do you remember their making what they call "full spun horns" out of brass?

A. No, because I think it couldn't be made full spun out of brass all one piece. All I know what was made while I was there, the bell was separate and the body was separate, and after they was formed, the body was formed and the bell was formed, they were spun together; that means the seam on the end of the bell toward the body was a seam here (referring to the edge of the large open end of the horn in evidence). The body had the seam open; the bell had the seam open; and the spinner put the bell in his chuck and the body in his mantle and put them together, closed up so that they come nice and smooth together. The spinner he had his—I forget now what you call it—he got his tools going around the bell and the body spinning around perhaps I should say fifteen hundred to two thousand revolutions a minute, and the spinner he put his tool on it and got them together, the two grooves, and you might as well say it is everything one piece, but it is never

(Deposition of George Kuenstle.)

done one piece, never.

Q. 44. Out of how many pieces were the bodies of these brass horns that you have just been telling us about made, the all-brass horns?

A. They were made one piece; the body is one piece.

Q. 45. You mean one piece of sheet metal?

A. One piece of brass; also the sheet-iron is one piece; if we ain't got enough sheet-iron we use two, but it looks bad; a dealer won't accept that.

Q. 46. Were all sizes of the brass horns made in the same way?

A. You refer to the brass bell horns, don't you?
[685]

Q. 47. The horns composed wholly of brass, the body and the bell?

A. All the same way.

Q. 47. Now, taking these horns composed wholly of brass, how were the edges of the body portion joined together?

A. The body joined together? We had a groover which was 72 inches long for the biggest horn.

Q. 48. That was used for the all-brass horns.

A. That was used for all the horns, all body horns, all brass bell, all of them.

Direct examination closed.

Cross-examination by Mr. CRUSE.

XQ. 49. What is your present occupation?

A. I am working on electric switch-boards.

XQ. 50. When did you first go with Hawthorne & Sheble?

(Deposition of George Kuenstle.)

A. It was about 1898 or 1899, around that time.

XQ. 51. What did you do when you first went there?

A. I made carrying-cases for talking machines, also carrying-cases for records.

XQ. 52. Were these of metal or of wood?

A. Wood boxes with leather, felt, canvas, or any old thing.

XQ. 53. Who did the covering of these boxes or cases?

A. It was me, and later on we got business and got help.

XQ. 54. In other words, you did carpenter work?

A. What was that?

XQ. 55. In other words, you did carpenter work, is that it? A. I covered them.

XQ. 56. As I understand it, when you first went there you made wooden boxes?

A. We did not make wooden boxes; wooden boxes was made outside and we covered them, made fancy boxes out of them.

XQ. 57. What did you do with the wooden boxes that were made [686] outside?

A. I covered them, put the blocks in there so they fit the talking machines, lined them out, put locks, catches, handles and corners on.

XQ. 58. When you first went there did you go as a carpenter? A. No, sir.

XQ. 59. What did you go as?

A. I went as a bookbinder; that is my trade what I learned in the old country.

(Deposition of George Kuenstle.)

XQ. 60. What did you do after you put the covers on the boxes?

A. Well, then I put my hands on different things, and I grew up and had charge of a few men. The next thing was—

XQ. 61. All the time you were with Hawthorne & Sheble your principal work was putting covers on and finishing? A. Finishing, yes, sir.

XQ. 62. Did you ever have anything to do with the manufacture of any horns which they sold other than to put the covers on?

A. I had no charge of it, but once in a while I had to go to the foreman of the tinsmith-shop and tell him what I want, how it is to be done, which way, what size and what number, for one number, 15 or 20 too many, and another number I have 100 too short.

XQ. 63. You never made or had anything to do with the making of the metal horns?

A. No, sir.

XQ. 64. Did you continue that work with Hawthorne & Sheble as long as you remained with them?

A. Yes, sir, I was there to the last minute; in fact, when the rest were gone I was called back to finish some work.

XQ. 65. When did you get the horn that you produced this morning?

A. When I got that?

XQ. 66. Yes, when did you get it?

A. Let me think—that was 1904, around that time, 1904—1905—1904, I think it was. [687]

XQ. 67. What part of 1904?

(Deposition of George Kuenstle.)

A. Well, I should say it was the fall—around Christmas time.

XQ. 68. How do you fix the date of 1904?

A. How do you mean the date?

XQ. 69. How do you know it was 1904?

A. Well, because in 1898 and 1899 I started in, and I was there almost four years before I was moved over to Howard and Jefferson. Well, the orders came in by the hundreds for carrying cases way out from Chicago. We got very busy that time; I had almost forty hands under me with carrying cases. This kept up almost a year and a half, and all of a sudden the bottom dropped out of that carrying-case business; I don't know how it happened all of a sudden, but the bottom dropped out and it wouldn't go. Some of the hands I had to lay off.

XQ. 70. A year and a half from 1902 would make it in 1903.

A. I couldn't tell you exactly the year; I think it was in 1904, if I ain't mistaken.

XQ. 71. Well, you are not sure whether it was 1903 or 1904, are you?

A. I couldn't positive say which year, but I would rather say it was 1904.

XQ. 72. Why would you rather say it was in 1904?

A. Because the time I was there until I left Hawthorne & Sheble, and had to leave them, and until the time my boy went down the shop with me—that is the reason I had rather say 1904, because he came there; I took him with me and tried to break him in in the carrying cases for the trimmings, and I had

(Deposition of George Kuenstle.)

him there a little while when the bottom dropped out of the carrying case business.

XQ. 73. But you are really guessing at the date, aren't you?

A. I say I couldn't positively swear to what months.

XQ. 74. You couldn't swear to what year it was?

A. As I said before, I would rather say 1904 than 1903.

XQ. 75. That is to say, it might be 1903? [688]

A. It might be, but I am in doubt of it. I would rather say 1904, because in my mind I think I would be more on the safe side if I say 1904 than if I say 1903.

XQ. 76. But it might have been 1903?

A. It might be.

XQ. 77. The horn that you produced this morning, was that made by hand? A. No, sir.

XQ. 78. Did you see any similar horns before that one at Hawthorne & Sheble's?

A. You mean similar horns? There were horns made there like this; there were two or three hundred in that lot.

XQ. 79. But before they made those two or three hundred they made a number by hand? A. Yes.

XQ. 80. And these that were made by hand were certainly made before the horn that you produced this morning? A. Yes.

XQ. 81. So that it is possible that there were horns like the one that you produced at Hawthorne & She-

(Deposition of George Kuenstle.)

ble the first part of 1904, although they were made by hand?

A. The first part of 1904, that might be.

XQ. 82. All of your testimony is based on recollection, is it not?

A. Yes. If I have enough time, I think about this thing. I have some stuff home, papers, books; if I go over them often enough, then it comes to me the same as yesterday, but you must know I have been away a good many years and I have a good many ups and downs since that time and I forget about this thing.

XQ. 83. When was this whole thing recalled to your mind? A. Why, yesterday.

XQ. Who did it?

A. This gentleman there (witness points to Mr. Hilliard).

XQ. 85. Mr. Hilliard? A. Yes, sir. [689].

XQ. 86. What did he say to you?

A. He asked me if I wanted to come down here to-day, if I would like to give testimony.

XQ. 87. Did he do anything to help you fix a date for those horns?

A. No, sir, when he started to talk I started to guess and think, and when my son was there he helped me a little, and naturally it came to me, but if I keep guessing and keep thinking for a couple of days then it will come to me.

XQ. 88. I understand you to say that from the time that you went to Hawthorne & Sheble that they never made any horns in sections other than the

(Deposition of George Kuenstle.)

type of horn which you produced this morning, is that right? A. Yes.

XQ. 89. How were the aluminum horns made?

A. The same as the brass bell horns.

XQ. 90. That is to say, they had a single piece?

A. The body was separate and the bell was separate; they were separate.

Cross-examination closed.

Redirect Examination by Mr. HILLIARD.

RDQ. 91. Did you have anything to do with silk-finishing any of the horns?

A. Yes, sir, that was my idea; I am sorry to say it, too. At that time I did not know what I know now.

RDQ. 92. Did you silk-finish any horns before you silk-finished the morning-glory horns?

A. Yes, sir.

RDQ. 93. What kind of horns?

A. Brass bell horns, with iron bodies.

RDQ. 94. Did you do that yourself?

A. Yes, sir.

RDQ. 95. Was it for that purpose that Hawthorne & Sheble needed a bookbinder?

A. Yes, there was nobody else able to do it.

RDQ. 96. You were employed for that purpose?

A. Yes, sir. [690]

RDQ. 97. You did other work besides cover cases, didn't you?

A. Yes, sir; and I did a good bit of other work; I was a jack of all trades by Hawthorne & Sheble; I was foreman and apprentice boy, carpenter, saw and hatchet boy, and every old thing I had to put

(Deposition of George Kuenstle.)

my hand to; I was willing to do it, too.

Redirect examination closed.

Recross-examination by Mr. CRUSE.

RXQ. 98. Notwithstanding all of these things, to wit, jack of all trades, you had nothing to do with the making of horns, either by machinery or by hand, is that right?

A. That is right. They had enough tinsmiths to do that. There was no use for me to tell them mechanics what to do.

RXQ. 99. They had a sufficient number of men to attend to that without any help from you?

A. Oh, yes.

RXQ. 100. Those men engaged in making the horns never had any orders from you *expect* to say what number of horns you wanted from them to cover?

A. Yes. I want to explain it to you a little. That tin horn here is dull tin; a dull tin horn is easy to be covered; bright tin it looks like frosted. Mr. Cramer, the superintendent at that time, he said to me, "Kuenstle, can't you make something like that?" I said, "Yes, I will try it." I went upstairs and made two little horns and brought them down to him and showed them to him, and he said, "That is good; how do you make it?" And I said, "I would like to keep it to myself." Well, I made thousands of them silk-finish, just made it like frosted glass. On this job you couldn't use that kind of thing; you had to use bright tin.

RXQ. 101. When did you first start to put the silk covers on horns?

(Deposition of George Kuenstle.)

A. In 1902, if I am not mistaken.

RXQ. 102. If you are not mistaken?

A. If I am not mistaken, 1902, or 1901—1902 on the brass bell [691] horns.

Recross examination closed.

Deposition closed.

By Mr. HILLIARD.—Complainant's counsel notifies defendant's counsel that he will take the testimony of Charles Scheerer, Eugene Domage, William Klein, Charles F. Gregory and Artimas Heller, beginning at 2 P. M. to-day, all of whom reside in the city of Philadelphia.

By Mr. CRUSE.—Counsel for defendant replies to this rather short notice.

IT IS AGREED by the parties hereto that signatures of all witnesses taken in this case in Philadelphia be waived unless otherwise notified before filing.

[Deposition of Carl Scheerer, for Complainant.]

CARL SCHEERER, a witness produced on behalf of complainant, being first duly cautioned and sworn, testified as follows:

Direct Examination by Mr. HILLIARD.

Q. 1. What is your name and age?

A. My name is Carl Scheerer; my age is 43.

Q. 2. Where do you reside and what is your occupation?

A. 3366 North Mascher Street, Philadelphia; occupation, sheet metal worker

Q. 3. Did you know the firm of Hawthorne & Shible in Philadelphia at any time? A. Yes, sir.

(Deposition of Carl Scheerer.)

Q.4. Did you work for them?

A. I worked for them seven years, yes, sir.

Q. 5. When did you begin working for Hawthorne & Sheble?

A. I started to make up—all I do there was making horns for talking machines.

Q. 6. When did you go with them?

A. I went with Hawthorne & Sheble in 1902.

Q.7. And how long did you work for them after that?

A. I worked for them seven years, about seven years.

Q. 8. What were Hawthorne & Sheble manufacturing when you first went with them? [692]

A. We only made round horns and supplies for talking machines, but I only worked on round horns.

Q. 9. How many different kinds of round horns did they make?

A. We made them up from 14 inch up to 72 inch.

Q. 10. What kind of material did you make them of? A. Brass, aluminum and tin.

Q. 11. Do you know what is meant by the term "Morning-glory Horn"?

A. Yes, sir, we start them I believe it was in 1904, about two years after I start in.

Q. 12. Do you remember when in 1904?

A. I can't remember the month, you know; I can't remember the month and the date, but it was in 1904 when we start in.

Q. 13. Who made the first one?

A. I started to make the first one.

(Deposition of Carl Scheerer.)

Q. 14. What were your particular duties at Hawthorne & Sheble at that time, in 1904?

A. Why, you know, Mr. Heller was the superintendent and he brought the horn up to me. He asked me, "Can you make one like this?" I said, "Yes, sure I can."

Q. 15. Tell us what the horn was like, the one he brought to you.

A. I cannot tell you the truth on that case, because I don't know whether it was a nine-leaf horn or a ten-leaf horn.

Q. 16. Just what do you mean by a morning-glory horn? How was a morning-glory horn made and put together?

A. I took the pattern off that one we got in and then I cut them out by hand with a hand-shear and put them in together and soldered them.

Q. 17. What did you cut out by hand?

A. The leaves and the separate parts I cut out by hand, and then I shaped them up and soldered them.

Q. 18. Do you know where Mr. Heller got this horn he brought to you? [693]

A. All I know from the State of New York; as far as I know, from the State of New York.

By Mr. CRUSE.—Objected to as being secondary evidence and hearsay.

Q. 19. What was the shape of the leaves of this horn that Mr. Heller brought to you?

A. It was the same shape as this here (indicating horn on table).

Q. 20. Just describe it, tell us the shape.

(Deposition of Carl Scheerer.)

A. I cannot remember how wide it was on the bottom; I guess it was the top of phonograph machines.

Q. 21. What was the general shape of each leaf of this horn that Mr. Heller brought to you?

A. Do you mean the measurement, the width?

Q. 22. In what form was it? What was the outline of the leaf?

A. It was just a regular shape for flower horn. If you want to know the width and all that, I cannot give you no answer of that. I cannot remember the width that makes the shape in the horn, the width on the top and the bottom and the middle part. The middle point here and the top and the bottom, that makes the shape. I can't give you no answer about that, I don't know the shape correctly.

Q. 23. Were the leaves straight on the sides or were they curved? A. The leaves were bended.

Q. 24. What do you mean by "bended"?

A. Had a shape like that (drawing a curve on the table).

Q. 25. And how were they joined together?

A. We put a hollow bead in them with the machine, a hollow bead on one side; that was just for show, to make it look good.

Q. 26. And were they soldered?

A. Soldered together, yes.

Q. 27. Did the hollow bead have anything to do with holding them together [694]

A. It was just about a quarter of an inch, just like that (indicating); a hollow bead with a machine.

Q. 28. Was it a lock seam?

(Deposition of Carl Scheerer.)

A. No, only soldered together.

Q. 29. Were the edges locked together?

A. Not the first one.

Q. 30. That is the one Mr. Heller brought to you that you have been telling about? A. Yes, sir.

Q. 31. Did you make one like it?

A. Yes, sir; I made just the same as the sample was.

Q. 32. Tell us how you went to work to make one like it.

A. Well, I went to work and took a piece of paper and got a pattern off, you know; then when I had a paper pattern I went to work and marked the paper pattern on a sheet of tin; I put it on a sheet of tin, marked it off and cut it out.

Q. 33. After you cut it out what did you do?

A. I put the bead in, the hollow bead—and when I got the hollow bead I bended the same shape what the sample was.

Q. 34. Anybody else work with you in making horns in this method?

A. Yes, sir; them fellers they went back to the old country; it was only Segal—that feller he worked in there; Mr. Heller he did not work with—he was the superintendent. All them fellers they were German and Hungarian fellers. It was only four fellers when we start.

Q. 35. Where is Segal now?

A. I don't know. I can't tell you what he works now; he used to make them—he works in a chandelier place.

(Deposition of Carl Scheerer.)

Q. 36. Can he talk English?

A. Well, he ought to talk a little bit, because he is over here around sixteen years, I believe, fifteen anyway; he ought to talk the language. I have not seen Segal for over five years.

Q. 37. Now, how long did you continue making morning-glory horns by cutting them out by hand after you had started? [695]

A. We worked about—Oh, I believe we worked four or five weeks, maybe six weeks, five or six weeks anyhow.

Q. 38. What happened after that?

A. Why, they made a die to cut them out, cut them out by a die, you know, with the press, with the machine.

Q. 39. What effect did that have on the manufacture of them, the cutting them out of the die?

A. The die made in five minutes a couple of hundred, five or ten minutes; it takes awful long to cut them out by hand; it took a man a quarter of an hour for one horn to cut them out by hand.

Q. 40. Before Mr. Heller brought this horn to you that you have told about, did Hawthorne & Sheble ever make any morning-glory horns while you were there?

A. No, sir, I never saw any, not before, not in this place, no; that was the first one Heller brought up.

Q. 41. While you were there, and before the time when Heller brought this horn, did they ever make any phonograph horns composed of a number of strips running the whole length of the horn?

(Deposition of Carl Scheerer.)

A. No, sir, we only made the round horns before, only round horns with the brass bell in front.

Q. 42. How many seams were there in the round horns with the brass bell in front?

A. Only one. Then they made spun horns; that was the same, only they were brazed together. There was a man there does all kind of work on regular spun horns. They were brazed together and look like one piece altogether when they were finished; you couldn't see the seam then; just the same as a brass instrument what a fellow has got to make music, like a music band.

Q. 43. How many parts, or how many sheets of metal were those made up from? [696]

To make up one horn, one of those big ones?

Q. 44. Yes.

A. They was 56 inches high, those big brass horns, and they made some 36 inches long and some 30 inches long. The 56-inch horn, why, that was a roll of brass, so many feet in one roll; I cannot tell you how many feet I had in one roll; I believe it must have been over 50 feet, 60 to 70 feet in one roll; they had different widths in brass, 24 inch, 14 inch, then they got 36 inch; I guess that was about the widest they had, 36 inch, but you get a good many out of a roll of brass—the 56-inch horn.

Q. 45. How many seams would there be in a 56-inch brass horn?

A. There was only one seam in 56 inches; then they made 72-inch horns; that was two seams.

Q. 46. What was the purpose of having two seams

(Deposition of Carl Scheerer.)

in the 72-inch horn?

A. They couldn't get the brass big enough to make them out of one piece; they had to make them out of two pieces; the brass wasn't wide enough to cut them out of one piece.

Q. 47. Were those seams so that they couldn't be seen?

A. They were all like one piece; they were soldered together, soft solder; the 56-inch, they were brazed together.

Q. 48. The seams in those spun horns couldn't be seen?

A. They were all like one piece, they couldn't be seen.

Q. 49. How were the aluminum horns before Mr. Hawthorne brought this horn to you, that you have been telling us about?

A. They made them just the same as they made brass horns, they grooved them together.

Q. 50. How many seams were there in them?

A. Only one; they only made the small ones, aluminum, 30 inches down; they did not make them as big as the tin horns, the brass horns,—only the small ones. The most of the horns were out of brass and tin. Mr. Heller ought to know where that horn [697] comes from, that horn I made up, but I cannot tell you whether it was from the city of New York or where they got it from.

By Mr. CRUSE.—All of the last is objected to as being volunteered.

Q. 51. Did you know Charles McGowan?

(Deposition of Carl Scheerer.)

A. Yes, sir.

Q. 52. Did he work for Hawthorne & Sheble?

A. Yes, sir.

Q. 53. While you were there? A. Yes, sir.

Q. 54. What did he do?

A. He worked on round horns; he made round horns; then afterwards he worked on flower horns; when I quit the place, he took my place.

Q. 55. You mean after you quit Hawthorne & Sheble?

A. Yes, when I quit the job he took my place, Mr. Charley McGowan. I was away about four weeks, then I came back and worked on round horns.

Q. 56. You came back after that?

A. Yes, sir, about four weeks after. But I made up the first one.

Q. 57. Where was the factory of Hawthorne & Sheble when you first went to work for them?

A. When I first started in it was on Ridge Avenue; I cannot tell you the number.

Q. 58. Did they move after that?

A. I only worked there about four weeks and then they moved up Mascher and Oxford.

Q. 59. And how long did they stay there?

A. I worked there a couple of years; I cannot tell you how long I worked in that place; I must have worked in that place about three years, I believe.

Q. 60. And then where did they remove to?

A. They had a place at Howard and Jefferson. The time, you know, they had them two places, Mascher and Oxford and Howard and Jefferson;

(Deposition of Carl Scheerer.)

the Howard and Jefferson was the main place, the Mascher and Osford was only a branch place; they had them two [698] places that time, but where I make the horn, that was Oxford and Mascher, where I make the first flower horn that was Oxford and Mascher.

Q. 61. Do you know George Kuenstle?

A. Yes, sir, Kuenstle, yes, sir.

Q. 62. Was he at Hawthorne & Sheble's while you were there? A. Yes, sir.

Q. 63. What was his job?

A. He made carrying cases for the records, and such things. I guess his trade is pocketbook maker, something like that; he made the satchels, carrying cases, and things of that sort.

Q. 64. Did he do anything else?

A. They made their own machines, the talking machines.

Q. 65. Did George Kuenstle do anything beside making cases?

A. Well, he made the cases and then he made some of the horns out of kind of stuff—I forget the name—round horns what they use for hollering.

Q. 66. Megaphones?

A. Yes, sir, megaphones.

Q. 67. Did he have anything to do with putting silk covering on horns?

By Mr. CRUSE.—Objected to as leading.

A. Yes, he covered all the horns with silk.

Q. 68. What was his job there, was he a foreman?

A. Yes, sir, he was a foreman.

Direct examination closed.

(Deposition of Carl Scheerer.)

Cross-examination by Mr. CRUSE.

XQ. 69. What have you been doing since you left Hawthorne & Sheble?

A. I worked for Hale & Kilbourne.

XQ. 70. What do they make?

A. They make all the inside work for Pullman cars; then they make automobile bodies. [699]

XQ. 71. When did you go with them?

A. I go with them—I work there four and a half years—it was four years the second of February since I work there; that was in 1909, when I left Hawthorne & Sheble, and I was out of work a week, and then I start in for Hale & Kilbourne and I work there since.

XQ. 72. How do you manage to recollect things that happened in 1904?

A. Why, because I started in 1902, when I started in with Hawthorne & Sheble, and then I worked there around seven years; in 1904 I only worked there about two years, when we started the flower horns.

XQ. 73. I did not ask you that. I asked you how you recollect these things as happening in 1904.

A. That is the only time I can remember; when I worked there about two years we started to make flower horns.

XQ. 74. What part of the year in 1904 did they start on them?

A. How do you mean, in the fall or the spring?

XQ. 75. Yes.

A. I can't remember that, whether it was fall or

(Deposition of Carl Scheerer.)

spring; I only remember it was in 1904.

XQ. 76. Did you ever see a horn that was completed in Hawthorne & Sheble's factory of the morning-glory type, so that you could say what it looked like?

A. No, sir, I never saw one before I made up that one.

XQ. 77. I did not ask you that. I asked you did you ever see a horn after it was completed in the shops of the Hawthorne & Sheble company?

A. I saw some of them around the stores.

XQ. 78. Did you ever see a morning-glory horn?

A. Yes, sir.

XQ. 79. Do you know what it would look like?

By Mr. HILLIARD.—I object to what it would look like. [700]

A. Yes.

XQ. 80. What did it look like?

A. They all looked like the same to me as the one I made up; they called them all morning-glory horns at that time.

XQ. 81. Did you ever see a morning-glory horn with the silk covering on?

A. Yes, sir, I saw them after we made them up; I couldn't tell you the exact time.

XQ. 82. Does this look like the horn made by the Hawthorne & Sheble company in 1904 (exhibiting horn to witness)? A. Yes, sir.

XQ. 83. That horn looks like the one you first made?

A. Sure, that is the first we made; the sample I

(Deposition of Carl Scheerer.)

made up was the first one as this; that looks a little smaller than this, the first one I made; I cannot tell you how many leaves there were.

By Mr. HILLIARD.—Complainant's counsel notes that defendant's counsel has exhibited to the witness side of the horn from which the silk is removed.

By Mr. CRUSE.—Defendant's counsel states that the witness was first shown the silk side.

The WITNESS.—That was made about a year after that—oh, it must be a year, I guess, but I am not sure about that; I cannot tell you how long it was afterwards when they covered them, how long it took to cover them; they covered thousands and thousands; that was Kuenstle's work, he covered them with silk.

XQ. 84. Have you finished talking now?

A. Yes, sir.

XQ. 85. Did the first horn that you made up have the same seam? Did it have the same longitudinal seam as the horn which I now show you?

A. Yes, sir.

XQ. 86. It had exactly the same seam?

A. Exactly the same seam, yes, sir.

XQ. 87. What sort of a seam is this?

A. That is a lock seam; that is lapped together and grooved together; it is grooved together. (Witness examined horn in the light.) [701]

XQ. 88. Is it exactly the same seam that you first made?

A. No, sir, that ain't soldered together; that is

(Deposition of Carl Scheerer.)

slapped together, grooved together.

XQ. 89. What part of the year 1904 did you first make a morning-glory horn?

A. What part? You mean the month?

XQ. 90. Yes. A. I can't tell you the month.

XQ. 91. How do you know it was 1904?

A. Well, I know that for sure, because I start in 1902 and I work there two years, then we start in the flower horns.

XQ. 92. Why couldn't it be in 1903?

A. Well, because I worked—I asked a couple of fellows, and they said it was in 1904.

XQ. 93. Which fellows did you ask?

A. Charley McGowan and Charley Wackes.

XQ. 94. And that is the only way you know it was in 1904? A. Yes, sir.

XQ. 95. If it was left to your own recollection, you don't know when it was?

A. No, sir, I can't remember whether it was in 1905, but them two fellows says it was in 1904.

Cross-examination closed.

No redirect examination.

Deposition closed.

[Deposition of Eugene Damage, for Complainant.]

EUGENE DAMAGE, a witness produced on behalf of complainant, being first duly cautioned and sworn, testified as follows:

Direct Examination by Mr. HILLIARD.

Q. 1. What is your name and age?

A. Eugene Damage; 42 years. [702]

Q. 2. And your residence and occupation?

(Deposition of Eugene Damage.)

A. 216 North 9th Street, Philadelphia; occupation, musical instrument maker.

Q. 3. Did you know the firm of Hawthorne & Sheble in Philadelphia? A. Yes, sir.

Q. 4. Did you work for them?

A. I worked for them, yes, sir.

Q. 5. When did you go to work for them?

A. I worked for them—I couldn't tell you exactly, but it might be about March or April, 1898.

Q. 6. What was their business at that time?

A. Well, they were making phonographs horns, made all kinds of accessories in that style of business.

Q. 7. What was your position with them?

A. My occupation?

Q. 8. What was your occupation with them when you first went there? A. As a horn maker.

Q. 9. Did you make the horns complete, or did you have only a part?

A. I make a specialty of the spun horn, what they call a full-spun horn.

Q. 10. How long did you continue in their employment?

A. I worked for them till February, 1902, but was off on different occasions; that is, between the day I start to work for them up to February, 1902, I think I left the place two or three times and worked a few months some other places. I did not work steady for the four years for them exactly, I was laid off a few months, a couple of times.

Q. 11. Where had you been working prior to going

(Deposition of Eugene Damage.)

with Hawthorne & Sheble?

A. Just at that time I work about a year for Mr. La Forrestier making what they call the spun bell there, and when I left him [703] I worked for Hawthorne & Sheble.

Q. 12. What was the business of La Forrestier?

A. Bell maker.

Q. 13. In Philadelphia? A. In Philadelphia.

Q. 14. Did they make any horns for Hawthorne & Sheble before you left them?

A. I think they did make some for them.

Q. 15. What kind of horns did they make for Hawthorne & Sheble? A. A full-size spun horn.

Q. 16. Were the sides of those horns straight or curved?

A. Straight, everything straight. This was the horn, made exactly same as the musical instrument bell. (Witness produced a catalogue entitled, "Hawthorne & Sheble, Offices and Salesroom, 602-604 Chestnut Street, Factory, 1025 Ridge Avenue, Philadelphia, Pa., U. S. A.")

Q. 17. Where did you get this catalogue?

A. When I was working in that place I guess somebody gave it to me.

Q. 18. Do you remember when this was issued?

A. This was issued on Ridge Avenue. That was in the beginning of their business when they were at Ridge Avenue.

By Mr. HILLIARD.—I ask that this catalogue be marked "Complainant's Exhibit for Identification, Damage Hawthorne & Sheble Catalogue."

(Deposition of Eugene Damage.)

Q. 19. Do you know where their place of business was when this was issued?

A. On Chestnut Street.

Q. 20. Where was their factory?

A. I think 1025 Ridge Avenue.

Q. 21. Do you remember when they moved from 1025 Ridge Avenue?

A. Well, I got laid off the time they moved, and that ought to be—I think they moved up-town in about 1901; I wouldn't [704] say for sure that is the date; I don't know exactly; you see, we worked on Ridge Avenue on the third floor, and they had half of the floor there; then they go up to the fifth floor after that, and from that they went uptown; but the dates I don't remember.

Q. 22. Does that catalogue show any of the kind of horns that La Forrestier made for Hawthorne & Sheble?

A. Yes; this here (Witness refers to page 34 of Complainant's Exhibit Damage Hawthorne & Sheble Catalogue); if they made anything else I don't know, I don't think so; I know they made some there, because they made them in the beginning of the phonograph business. Mr. La Forrestier made the full spun horns at the beginning of the phonograph business, and about that time Hawthorne & Sheble had just started to make this kind of horn (Witness refers to page 33 of the Complainant's Exhibit Damage Hawthorne & Sheble Catalogue); they were starting to make these. When I got acquainted with them, Hawthorne & Sheble were making these. I got there

(Deposition of Eugene Damage.)

as a spun horn maker to make that style (Witness refers to page 34 of the Complainant's Exhibit Damage Hawthorne & Sheble Catalogue).

Q. 23. Now, how were these horns on page 34 of the catalogue made; how were they constructed and built?

A. They were made the same thing as the musical instrument horn.

Q. 24. That doesn't mean anything to us.

A. I want to make it as clear as possible. Let me see how I could explain that. The spun brass horns were made from the plank of brass, turned and brazed together, and finished on the form, and spun on the form, so they were made like one solid piece of metal.

Q. 25. How many seams did they have in the body of the horn?

A. Depending on the size. Size 14 inch, on page 34 of Complainant's Exhibit for Identification Damage Hawthorne & [705] Sheble Catalogue, had only one, which extended longitudinally. From 18 inch to 42 inch was one seam, longitudinally, the same way, and a gusset on the large part of it, or a piece put in.

Q. 26. Can you draw a gusset on the catalogue there?

A. Yes, sir. (Witness draws upon page of Catalogue.) The 56 inch was made with a ring there.

Q. 27. Where was the ring?

A. Right there. (Witness marks the letter "A" at the location of the ring in the 56-inch horn on

(Deposition of Eugene Domage.)

page 34 of the catalogue.) The 56 inch was made firstly of a straight body with one seam longitudinally, and the bottom was made with two seams, the bell was made of two seams; that is, to get the material, we would get two planks and get them like that and have the seam here, and altogether joined together by the band where I have the letter "A" on page 34 of the catalogue. That seam has nothing to do with it. If we could have spun the horn in one piece, no seam would be necessary.

Q. 28. Why was it necessary in the spun horns to have two seams in the larger sizes?

A. Well, it was necessary for saving the material and working quicker.

Q. 29. Now, did La Forrestier, while you were with him, ever make any aluminum horns, tin horns or brass horns, composed of a number of longitudinal sections? By a number, I mean more than two.

A. No, sir, never saw him make any other horn than that the time I was with him.

Q. 30. Now, what kind of a horn did Hawthorne & Sheble make when you went with them, the same kind?

A. When I went with them they were making this brass horn, made of two pieces, shown on page 33 of the catalogue, and made of brass—all brass they were only making at that time. I [706] went with them to make a specialty of the full-spun brass horn shown on page 36 of the catalogue.

Q. 31. How did you make these horns on page 34 of the catalogue?

(Deposition of Eugene Damage.)

A. The shape of the first spun horns are made by hammering them to their shape and finishing up on a form or a mandril with a spinning tool.

Q. 32. Now, did any of the horns made by La Forrestier for Hawthorne & Sheble have longitudinal ribs or seams? A. Not that I know of.

Q. 33. When did you say you left Hawthorne & Sheble; was it in 1902?

A. I left them in February, 1902.

Q. 34. Now, before you left Hawthorne & Sheble, had Hawthorne & Sheble made any horns composed of more than two longitudinal sections joined together by seams?

A. If I remember well, they made some aluminum horns—some horns were made with two and three seams; that is, the top with sometimes one or two seams and one to join the top and the bell together. Here they had to have a seam.

Q. 35. You mean there would be a seam to fasten the bell and the body? A. Yes, sir.

Q. 36. And in some cases there would be two longitudinal seams in the body of the horn?

A. Yes, to save metal. I am speaking mostly of the aluminum horns.

Q. 37. What was the purpose of having two seams in the body of the horn?

A. To save the metal. Sometimes they did not have a wide enough piece of metal. There was always a seam to join the bell to the body. Zinc and tin were only made with one seam in the body and one to put together. That is all I ever saw there.

(Deposition of Eugene Damage.)

Q. 38. What sizes of horns required two seams?

A. I don't remember that exactly.

Q. 39. Was it the large or the small horns?

A. I suppose it would be on the large. On the 30-inch, what they call spun aluminum, horn, 30 inches long, they had a pretty large size horn there, and to get the width on the bottom of the body, the connection of the body and the bell requires such a wide metal that they made the body of two pieces.

Q. 40. Will you draw on this 56-inch horn, on page 34 of the catalogue, a sketch of the gusset that you have been telling about?

A. There is no gusset on that; only from 18 inches to 42 inches; 56 inches, as I explained before, has no gusset.

Q. 41. Will you draw on this 24-inch horn, on page 34 of the catalogue, a sketch of the gusset? Just draw it right on the horn.

A. (Witness does so, and marks it "B.") This gusset, of course, would not show when the horn was finished.

Q. 42. How many of those gussets were made in these spun-brass horns? A. Only one gusset.

Q. 43. Would there be only one gusset where there were two longitudinal seams in the body of the horn, or two gussets?

A. There is nothing necessary, nothing come to that.

Q. 44. Now, you have told about the brass horns. While you were with Hawthorne & Sheble did they make any horns of tin composed of more than two

(Deposition of Eugene Damage.)

longitudinal sections joined together with seams? Did they make any such horns of two or more sections running the whole length of the horn joined together by tinsmith seams?

A. No, only made one seam; all I saw there was made of one seam.

Q. 45. Do you know what the morning-glory horn is? [708]

A. No.

Q. 46. Do you know what a flower horn is?

A. Only from what I heard from the stores.

Q. 47. Did you see them in the stores?

A. I suppose that is what they call flower horn.

Q. 48. Do you know how they are constructed?

A. No.

Q. 49. Did Hawthorne & Sheble ever make any horn composed of sections running the whole length of the horn which curved on both edges, that is to say, curved inwardly on both edges?

A. Not up to the time I was there. They might make them very near after I left, but I never saw one made there.

Q. 50. Did Hawthorne & Sheble ever make, while you were there, a horn of any material the body of which was curved, I mean curved from end to end?

A. No.

Q. 51. Do you understand my question? I mean curved from end to end.

A. No, none.

Q. 52. While you were with Hawthorne & Sheble did they make any horn like the one which I show

(Deposition of Eugene Domage.)

you (exhibiting to witness Complainant's Exhibit Kuenstle Horn)? I call your attention merely to the construction of this horn whereby it is composed of nine longitudinal sections joined together by seams.

A. I never saw any made at that time.

Q. 53. Did Hawthorne & Sheble ever make, while you were there, any horns composed of more than two longitudinal sections joined together by ribs or seams?

A. They only made aluminum, made of two longitudinal seams, as far as I remember.

Q. 54. Have you any interest of any kind whatsoever in the outcome of this suit?

A. None at all.

Direct examination closed.

Cross-examination by Mr. CRUSE.

XQ. 55. I understand that you left the employ of Hawthorne & Sheble in 1902. Will you please tell me what part of the year [709] 1902?

A. February.

XQ. 56. Were you at all familiar with what went on in the shops or factories of this concern after you left? A. Not after I left, no, sir.

XQ. 57. Now, referring to the longitudinal seams which occurred in the tin and aluminum horns which you have described, how were the seams made?

A. I cannot give a real good answer on that, not having done that work myself; it was done by some tinsmith there, which was there especially for that kind of work, but I think they were doing that the same as the water-spout or stovepipe are made; that

(Deposition of Eugene Domage.)

is the same as those are made. I don't know what you call it, but it is the same way as they are making that.

XQ. 58. And all this occurred while you were in their employ from 1898 to 1902; I mean the making of the seams?

A. That is the only way they make the seam the time I work there. For a time they did not make the horn—let me see—everything was soldered except the aluminum, of course. All their brass horns, which they made of tin body, brass bell, sometimes all brass, that is, the body and bell of brass, were soldered. I think they did make the silveroid horn the same way too. I am not sure about that, but I think they did solder them together.

XQ. 59. While you were in the employ of Hawthorne & Sheble did you ever see any glass horns?

A. No, sir. Of course, it could have been done in the tinsmith shop, but I never saw them in the shop; the glass horn could have been in the office, but I never saw it in the shop. The office was on the third floor, the shop on the second.

Cross-examination closed. [710]

Redirect Examination by Mr. HILLIARD.

RDQ. 60. Did Hawthorne & Sheble have any means of making glass horns?

A. Not that I know of; no, they have no means to make them. After they extend they took two or three places around the neighborhood; then I do not know what they done. When I work there they had

(Deposition of Eugene Damage.)

only that place, and they had nothing there to make the glass horns.

RDQ. 61. Who was the tinsmith that you have spoken about?

A. I can give you no names. I can give no names, but if you had seen me about a month ago, I got a hold of a fellow there who work after me, and he knew them. That man called to me and asked me for work.

RDQ. 62. Did he come in reference to this case?

A. No, nothing at all, he was looking for a job. He could have got some name of the tinsmith. If you get a hold of Mr. Heller he could give you the name of one or two, because he was the man that knew everybody. I know one under the name of Charley, that is all.

Redirect examination closed.

Deposition closed.

Philadelphia, Pa., August 11, 1904.

Met pursuant to adjournment.

Appearances: (Same as before.)

[Deposition of Henry J. Mayer, for Complainant.]

HENRY J. MAYER, a witness produced on behalf of complainant, being first duly cautioned and sworn, testified as follows:

Direct Examination by Mr. HILLIARD.

Q. 1. What is your name and age? [711]

A. Henry J. Mayer; age, going on 29.

Q. 2. And your residence and occupation?

A. Residence, 2548 Sepviva Street, Philadelphia;

(Deposition of Henry J. Mayer.)

occupation, metal spinner.

Q. 3. And you are with Horne & Brannan?

A. Yes, sir.

Q. 4. Did you know the firm of Hawthorne & Sheble? A. Yes, sir.

Q. 5. Did you work for them?

A. Four years.

Q. 6. When did you go to work for them?

A. I judge about the year of 1899, the month of August.

Q. 7. What was their business?

A. When I first went to work for them they manufactured horns for phonographs and phonograph supplies.

Q. 8. What kind of horns were Hawthorne & Sheble manufacturing when you went with them?

A. When I first went to work with them they manufactured brass, zinc—they call that silveroid—and aluminum horns. They made some tin horns too.

Q. 9. Will you describe how the aluminum horns were made.

A. The aluminum horns had a spun bell, and the body was one piece lapped together.

Q. 10. How was it lapped together?

A. Why, it was lapped together just like a groove, set in to one another, two laps.

Q. 11. Was it a tinsmith lock seam?

A. Yes, that is what you would call it.

Q. 12. Is what you have said true of the aluminum horns all the time you were there?

(Deposition of Henry J. Mayer.)

A. Yes, all the time I was there.

Q. 13. Did Hawthorne & Sheble at any time while you were there make aluminum horns composed of two or more longitudinal sections running the entire length of the horn? [712]

A. Two sections?

Q. 14. Two plates or panels.

A. I guess they did. The only way they did that is when they couldn't get the metal wide enough they would make the body half—that is, lapped together by a tinsmith's lock seam.

Q. 15. You mean they would be lapped together longitudinally the length of the horn?

A. Yes, the length of the horn; the bell would be lapped to the body too; the spinner would do that by a roller.

Q. 16. How many of these strips or sections were used in the cases that you have just told about?

A. Not over two.

Q. 17. Did Hawthorne & Sheble, while you were there, ever make any aluminum horns which tapered in curved lines from one end to the other?

A. No, sir—wait a minute on that—tapered and curved lines?

Q. 18. I am speaking only of the body of the horn.

A. That tapers.

Q. 19. But did it taper in curved lines?

A. No, it did not.

Q. 20. How about the tin horns?

A. They were mostly made just a straight taper.

Q. 21. Were they made in more than one section,

(Deposition of Henry J. Mayer.)

the body of the tin horns?

A. Two sections at times, according to size.

Q. 22. That was in the larger horns?

A. Yes, sir.

Q. 23. Did they ever make any tin horns, while you were there, that tapered in curved lines; that is to say, the body of the horn? A. No.

Q. 24. How were the brass horns made?

A. They were made in two pieces; let me see, they were put together—the body was put together with a tinsmith [713] lock seam, and the bell and the body were rolled together by spinner.

Q. 25. Were they ever made any more than two pieces? A. No.

Q. 26. What size horns were made in two pieces?

A. Why, anywheres from 14 up to 52 inches.

Q. 27. Do you know what is meant by the term, "Morning-Glory Horn"? A. No, I do not.

Q. 28. Do you know what is meant by the term, "Flower Horn"?

A. That thing—I was out of there before they started to make those things.

Q. 29. Do you know, aside from what they made, what is generally known by the term of flower horn or morning-glory horn? A. Yes, sir.

Q. 30. Do you know how they are constructed?

A. No, I do not.

Q. 31. You know their shape? A. Yes.

Q. 32. Do you know whether or not they are constructed with more than one sheet of metal?

A. Sure, there is more than one sheet of metal; I

(Deposition of Henry J. Mayer.)

couldn't tell you how many, though.

Q. 33. Do you know how the strips of metal in the flower horn are joined together?

A. No, I do not, they came after my time in the factory; I was out of there before that.

Q. 34. I am speaking of flower horns generally?

A. I never examined them thoroughly to find out, because I got out of the horn business and went right in the chandelier business when I got out of there.

Q. 35. Did Hawthorne & Sheble, while you were there, ever make any horns of the shape of the flower horn and morning glory horn? A. No, sir. [714]

Q. 36. While you were at Hawthorne & Sheble's, did they ever make a horn similar to this one which I show you (exhibiting to witness Complainant's Exhibit Kuenstle Horn)? A. No, sir.

Q. 37. I refer now to the feature of this horn in which it is composed of a number of longitudinal sections and fastened together with seams.

A. Nothing like that was ever made there in my time.

Q. 38. Was any horn ever made there in your time that had more than two ribs or seams running the length of the body? A. No.

Direct examination closed.

Cross-examination by Mr. CRUSE.

XQ. 39. Will you look at the Complainant's Exhibit Kuenstle Horn and tell me what seam is used to join the sections together?

A. No, I cannot; I haven't any experience in that

(Deposition of Henry J. Mayer.)

seam at all. I can't tell you what seam that is. It is similar to the tinsmith's lock seam, but the tinsmith's lock seam is flat. That is what they used to make there, it used to be flat, while this is half round.

Cross-examination closed.

Redirect Examination by Mr. HILLIARD.

RDQ. 40. Will you state a little more in detail what your job was in Hawthorne & Sheble's, what your duties were?

By Mr. CRUSE.—Objected to as not proper redirect examination.

A. I handled all the metal, worked with the tinsmiths, spinners, used to keep the stocks, all of the metal, aluminum, brass, zinc, or whatever came in there.

Redirect examination closed.

Recross-examination by Mr. CRUSE.

RXQ. 41. Did you actually do any work on the horns while you were with Hawthorne & Sheble's?

A. Yes, I used to work on the horns; I worked with the tinsmith's occasionally; most of the time I was on the spinning.

RXQ. 42. What did you do particularly?

A. Sometimes I used to help the tinsmith make this lock seam. I was only a boy of seventeen years when I left there. I used to do all the annealing and sometimes I would spin.

RXQ. 43. How did you happen to refresh your recollection as to what went on at Hawthorne & Sheble while you were there?

(Deposition of Charles Wackes.)

A. This man here came to see me this morning and asked me to come down here.

RXQ. 44. Which man do you mean? [715]

A. Mr. Hilliard; he asked me if I knew anything about them.

Recross-examination closed.

Deposition closed.

[Deposition of Charles Wackes, for Complainant.]

CHARLES WACKES, a witness produced on behalf of complainant, being first duly cautioned and sworn, testified as follows:

Direct Examination by Mr. HILLIARD.

Q. 1. What is your name and age?

A. Charles Wackes; 52 years old.

Q. 2. And your residence and occupation?

A. 2800 Cambridge Street, Philadelphia; my occupation is milk dealer.

Q. 3. Did you know Hawthorne & Sheble, of Philadelphia, at any time?

A. Yes, sir, I did.

Q. 4. And did you work for them?

A. Yes, sir.

Q. 5. When did you go to work for them?

A. In 1900.

Q. 6. How long did you work for them?

A. About six years.

Q. 7. What was their business in 1900 when you went to work for them?

A. They made all kinds of phonograph supplies.

Q. 8. Will you state a little more definitely just exactly what they made.

(Deposition of Charles Wackes.)

A. They made brass horns, black iron horns, and also cases, record cases, record cabinets; they had regular cabinets up there on the third floor; I was in the tinsmith-shop.

Q. 9. Just what were your duties there when you first went to Hawthorne & Sheble?

A. What I do, we made those brass horns, spun brass horns, and then was brass horns, the bell was spun and the body was grooved [716] together; you know what the old style horn is.

Q. 10. You were a spinner, were you?

A. Yes, and I had charge of the tinsmith-shop besides.

Q. 11. How many departments were there in Hawthorne & Sheble's place?

A. There were about four or five.

Q. 12. What were they?

A. There was the case, what they made, those carrying cases; then they had a cabinet department; there was a spinning department; then there was a department where they made those stains for the horns; then there was a polishing department.

Q. 13. Did you work in the finishing department all of the time?

A. Yes, sir.

Q. 14. Did I understand you to say you worked in the tinsmith department?

A. Tinsmith and spinning department was one.

Q. 15. Can you name some of the other men who were there in your department while you were at Hawthorne & Sheble's?

(Deposition of Charles Wackes.)

A. Well, there was Charley Scheerer, he was in the tinsmith department; then there was Dave O'Connor, he was in the painting department; then there was Billy Klein, he was in the polishing department; and Dodt, he was in the machine department; and James Glathill, he was in the machine department.

Q. 16. Now, was Mr. Heller there?

A. Mr. Heller was there. Well, he was there the first time; he did not stay there all the time I was there.

Q. 17. Where was Hawthorne & Sheble located when you first went with them?

A. It was on Mascher and Oxford, was the factory, and the office was down here on Chestnut Street.

Q. 18. Were you there at any time they were on Ridge Street?

A. No, I wasn't there; I came there later.

Q. 19. Now, will you describe to us all the different kinds [717] of horns that Hawthorne & Sheble were making when you first went there?

A. Well, they make brass horns, then we make small aluminum horns, then we make tin horns, with brass bell on it, brass bell and tin body.

Q. 20. Any others?

A. Well, I made different kinds of horns. I made some big horns that they sent out to exhibitions at Chicago. We made many different shapes; we might only have made one or two of them; the most was the regular size horns that go with the phonographs.

Q. 21. Now, how were these horns that you have

(Deposition of Charles Wackes.)

just been telling about made and put together?

A. When I come there they were soldered together; the bell was spun and the body was made in one piece, soldered together, and afterward both of them was soldered together.

Q. 22. Did you make the body of all the horns in the same way? A. Most of them, yes.

Q. 23. Did you use the same number of pieces of sheets of metal in each horn?

A. Pretty nearly all the same way, one or two pieces in each body.

Q. 24. And those pieces were joined together how?

A. Were soldered together.

Q. 25. How did the seams run in the body?

A. The seams run the long way.

Q. 26. Do you know what is meant by a morning-glory or flower horn? A. Yes, sir.

Q. 27. Have you seen them? A. Yes, sir.

Q. 28. How much have you seen them?

A. I have seen a good many of them.

Q. 29. Did Hawthorne & Sheble at any time make flower horns? A. Yes, they did.

Q. 30. Do you remember when they began to make flower horns? [718]

A. About 1904.

Q. 31. You say about 1904. A. 1904.

Q. 32. Can you make it any more definitely?

A. Well, it might be in the fall or in the spring; I couldn't tell you exactly.

Q. 33. Do you remember how they happened to begin to make flower horns?

(Deposition of Charles Wackes.)

A. Mr. Hawthorne he brought a sample over from New York.

Q. 34. What did he do with the sample?

A. Well, we looked it over to see how it is made, then made out patterns after.

Q. 35. Did you look over it yourself?

A. Yes, sir.

Q. 36. Who else looked it over?

A. Charley Scheerer and the superintendent there, Heller, and there was a feller on the third floor, I can't remember the name now; he was superintendent afterwards, after Heller left.

Q. 37. Had Hawthorne & Sheble ever made a horn like the one that Mr. Hawthorne brought to you before that time?

A. No, sir, no, they did not make any horn.

Q. 38. What happened after he brought the horn to you and Mr. Heller and Mr. Scheerer?

A. He brought the horn up and we tried to make the horn.

Q. 39. How did you go about it to make the horn?

A. We took the measurement from the leaves that was in the horn and traced them over again, and Charley Scheerer, he was the tinsmith, he cut them out, and then we soldered them together.

Q. 40. Which horn did you solder?

A. The horn we made after the one that was brought.

Q. 41. How many horns did Charley Scherer make at first?

A. Well, at first we made one or two, so we could

(Deposition of Charles Wackes.)

put the right size [719] on it.

Q. 42. Then what happened?

A. Then afterwards we made them by the dozen or by the hundred, still soldering the leaves together; then afterwards we had dies made to punch the leaves out, and then had grooves made to groove them together instead of soldering.

Q. 43. How long after Charley Scherer made the first horn that you have told about did you get the die in the grooving machines?

A. Well, about three months afterwards.

Q. 44. How fast did you make them then, after you got the die in the grooving machine?

A. Then we make them by the thousands; we put them together by thousands.

Q. 45. Was this horn that Mr. Hawthorne brought made in Hawthorne & Sheble's place? A. No.

Q. 46. Before Mr. Hawthorne brought this horn to you, Heller and Scheerer, and while you were there in Hawthorne & Sheble's employ, did Hawthorne & Sheble, or anybody in their factory, make any kind of a horn with a body composed of more than two sections running its entire length?

By Mr. CRUSE.—Objected to as leading.

A. No, sir.

Q. 47. Did they make any aluminum horn of that kind?

A. No, but we made aluminum horns of two pieces; the body was made of two pieces and the bell put on the end of it.

Q. 48. Why did you make the body of two pieces?

(Deposition of Charles Wackes.)

A. We had to make it of two pieces; we couldn't get the stuff wide enough.

Q. 49. Did those aluminum horns that you have just told about have bells? [720]

A. Bells, spun bells on it.

Q. 50. How were the bells fastened to the body?

A. They were grooved on; I rolled them on.

Q. 51. How were the brass horns made?

A. The bell was soldered on the body when I come there; then after I worked there a while I grooved them on on the machine with a roller.

Q. 52. Were any of those brass horns composed of more than two sections running the length of the body?

A. Never more than two, the smaller size always one piece, and the wider size, because the stuff wasn't wide enough, we had to use two pieces.

Q. 53. How about the tin horns?

A. The same thing.

Q. 54. Did Hawthorne & Sheble make what they call full-spun horns? A. Yes, they did.

Q. 55. How were those made?

A. They were brazed together first and then hammered out afterwards; the bell was spun, the body brazed together and hammered out afterwards; then after that we spin it over.

Q. 56. Were the seams visible in those brass horns?

A. No, we couldn't tell the seams were visible only when it was tarnished; then you could see the marks from the brazing.

(Deposition of Charles Wackes.)

Q. 57. Were the bodies of those spun or full-spun horns ever made of more than two parts? A. No.

Q. 58. Why were they made of two parts?

A. The brass did not come wide enough to make it out of one.

Q. 59. Did you ever see any horn made in Hawthorne & Sheble's place like the one I show you on page 34 of Complainant's Exhibit for Identification Damage Hawthorne & Sheble Catalogue? I refer to the 42-inch horn on that page, which has a triangular portion of the bell marked out and indicated by the letter "B."

A. That is a full-spun horn; that is a piece brazed in there. [721]

Q. 60. Did they ever make any horns like that?

A. Yes; I put pieces in the bell when they hammered it out to get the width of the bell, otherwise they couldn't get it wide enough. You wouldn't notice it when they stand.

Q. 61. Did Hawthorne & Sheble ever make any brass horns that were fully spun, made wholly by spinning? A. No.

Q. 62. Would that be possible to do? A. No.

Q. 63. Did they ever make any aluminum horns that were fully spun? A. No, sir.

Q. 64. Would that be possible? A. No.

Q. 65. In your last two questions I am referring to spinning the body of the horn and the bell also.

A. No, sir.

Q. 66. Did Hawthorne & Sheble ever make glass horns?

(Deposition of Charles Wackes.)

A. They had some there; they did not make them, though. I don't know where they got them from.

Q. 67. Do you remember Eugene Damage?

A. Yes.

Q. 68. What did he do there?

A. He was brazer; he made the one-piece horn, what they call one-piece horn; he brazed them together and hammered them out.

Q. 69. In what department were parts of the horns cut out and put together?

A. Oh, in the tinsmith department.

Q. 70. That is where you were? A. Yes.

Q. 71. Did Hawthorne & Sheble make any horns, prior to the time when Mr. Hawthorne brought this flower horn to you and Heller and Scheerer, out of curved strips, strips curving from one end to the other of the horn? A. No.

Q. 72. Did they make any other than straight body horns?

A. Yes, we made some horns shaped like—they come up on the machine that way and bend over that way (indicating); the pieces would get in a different way, not in the round way.

Q. 73. Can you find any in this catalogue (exhibiting to witness [722] Complainant's Exhibit for Identification Damage Hawthorne & Sheble Catalogue)?

A. (Witness examines catalogue.) No, there is nothing in there. The seams run the round way instead of the long way; the seams ran around the horn instead of the long way. The pieces were set

(Deposition of Charles Wackes.)

together like an elbow on the stovepipe.

Q. 74. What were those horns called?

A. I don't know; I couldn't tell you; we didn't make many; just once in awhile we would get an order for it.

Q. 75. What was Heller's position with Hawthorne & Sheble? A. He was superintendent.

Direct examination closed.

Cross-examination by Mr. CRUSE.

XQ. 76. When did you leave Hawthorne & Sheble? A. In 1906.

XQ. 77. Why did you leave?

A. I went in business for myself.

XQ. 78. What sort of business?

A. Milk business.

XQ. 79. What part of 1906 did you leave?

A. May, I guess, May, 1906.

XQ. 80. During the whole time that you were working for Hawthorne & Sheble what position or job did you hold?

A. I was metal spinner, and besides had charge of the tinsmith department.

XQ. 81. What was Scheerer in that department?

A. He was the head tinsmith.

XQ. 82. But you were foreman?

A. I was foreman over the room; he was the head tinsmith on account I was no tinsmith; I was a spinner; and Charley [723] Scheerer he couldn't speak much English and couldn't make himself known to the other workers around there, so I had

(Deposition of Charles Wackes.)

charge over the room and he was the head tinsmith.

XQ. 83. You said while you were at Hawthorne & Sheble they made many shapes of horns?

A. Yes, sir.

XQ. 84. What were the shapes?

A. The most shapes were straight horns, the bell soldered on the body or the bell was grooved on the body; and then they made those one-piece horns, all brazed together, and the bell was brazed on the body so it looked like one piece.

XQ. 85. I don't mean how they were made; I mean the different shapes.

A. Most of them were the same shapes as the long horn you have here in the catalogue (referring to page 16 of Complainant's Exhibit Damage Hawthorne & Sheble Catalogue); that is the most shape was made (referring to page 33 of the Catalogue).

XQ. 86. What was the shape of the glass horns which you saw at Hawthorne & Sheble's?

A. That was a short horn with a wide bell on it.

XQ. 87. Shaped like a flower.

A. Shaped pretty near like a flower horn, just shorter; it was flapped out like a flower horn.

XQ. 88. Did it have scalloped edges?

A. It was all smooth edges.

XQ. 89. You say that Mr. Hawthorne brought a sample from New York? A. Yes.

XQ. 90. How do you know he brought it from New York? A. He told us.

XQ. 91. Told who? A. He told me.

XQ. 92. Did he tell you where he got it?

(Deposition of Charles Wackes.)

A. No, he just said he brought it from New York.

XQ. 93. How many sections were in that horn?

A. About eight or nine.

XQ. 94. You don't know exactly how many?

A. No, I couldn't remember no more. [724]

XQ. 95. How were the sections joined together.

A. They were soldered together.

XQ. 96. Was there a seam between the sections?

A. Yes, there was a seam, certainly.

XQ. 97. What sort of a seam?

A. A stand-up seam.

XQ. 98. Who made the first copy of that horn?

A. Charley Scheerer.

XQ. 99. Did he make an exact copy of it?

A. Yes, he did.

XQ. 100. Exactly like it? A. Yes, sir.

XQ. 101. The same sort of seam?

A. Yes, sir, the same sort of seam.

XQ. 102. When was this horn brought in by Mr. Hawthorne? A. About 1904.

XQ. 103. What part of 1904?

A. I cannot remember whether it was spring or fall, I couldn't say.

XQ. 104. Do you remember Kuenstle, who used to work there? A. Yes, sir.

XQ. 105. What did he do?

A. Make carrying cases.

XQ. 106. What else did he do?

A. Then afterwards, when we made those flower horns, he covered those horns and had charge of the department of dipping.

(Deposition of Charles Wackes.)

XQ. 107. Would he recollect when the first horn was brought in?

By Mr. HILLIARD.—I object to the question of what he would do.

A. I guess he had nothing to do with the first horn at all.

XQ. 108. Do you know whether he saw the first horn or not? A. I couldn't say.

XQ. 109. He says he did.

A. He might; he was in a different department altogether; he may have seen it before.

XQ. 110. He says the first sample horns were made in the first part of 1904 or possibly in 1903.

A. I don't think so.

XQ. 111. Do you agree with him?

A. I don't think it was until 1904.

XQ. 112. You don't know what part of 1904?
[725]

A. No, I couldn't tell you, there are so many different things between it.

XQ. 113. You are merely guessing at it?

A. I am positive it is in 1904.

XQ. 114. You are gussing at the time?

A. I am guessing at the time of the year.

XQ. 115. It might have been in the spring?

A. It might have been in the spring or might have been in the fall.

XQ. 116. What sort of seams did they make in the tin and brass horns?

A. Well, regular grooving seams, what they put on a stovepipe, just the same groove.

(Deposition of Charles Wackes.)

XQ. 117. Was that the same kind of a seam that was put on the first horn they brought in?

A. No, that first one that came in, the seams was soldered together.

XQ. 118. Did the edges of the sections overlap?

A. No, had sharp edges on them.

XQ. 119. Describe what it looked like.

A. The edge was bent up on the sides and from two leaves always the two edges soldered together.

XQ. 120. Were the seams straight?

A. No, they couldn't be straight, they were curved.

XQ. 121. Which way did they curve?

A. The long way of the horn.

XQ. 122. How many copies were made of this first horn?

A. Well, first they made only one sample; then afterwards they made different samples in a different way.

XQ. 123. What different way?

A. After the first one they started to make on one side the leaf—they put a groove in there, and on the other side of the leaf they put a straight edge on there and set one side in the groove in one leaf; they put a groove in one side of the leaf; each leaf had a [726] groove on one side and a straight edge on the other side, and the straight edge set inside from that groove and be soldered in there so it looks outside just the same it was grooved together.

XQ. 124. Why did you make them that way?

A. It looked better than with that straight edge on

(Deposition of Charles Wackes.)

there as the sample was.

XQ. 125. In other words, you made a regular tin-smith's lock seam?

A. No, it was no lock seam at all.

XQ. 126. Was it like the seam that is in a stove-pipe?

A. No, it never was that way; the stovepipe you don't have to solder; the seam we made there, that groove we made there wouldn't hold anything, it was only for show, to look like a seam; still it was soldered together; if it wasn't soldered it wouldn't hold.

XQ. 127. How many horns did you make like you have just described?

A. We made two or three months that way.

XQ. 128. About how many horns?

A. We turned out about two or three dozen a day.

XQ. 129. The machine that you bought to put them together was for the purpose of making this type of seam, was it?

A. That machine was extra made to groove them horns together to do away with the soldering business.

XQ. 130. What sort of a seam did the machine make?

A. It made just the same as on a stovepipe, lock seam.

XQ. 131. Who ran that machine?

A. Well, different fellers run the machine; Charley Scheerer runs the first one, then Charley McGowan he was the next one.

XQ. 132. Did you ever run it?

(Deposition of Charles Wackes.)

A. I worked on it; still, I did not run it; he ran it; I never had anything to do with it.

Cross-examination closed.

Deposition closed. [727]

**[Deposition of William Kleimenhagen, for
Complainant.]**

WILLIAM KLEIMENHAGEN, a witness produced on behalf of complainant, being first duly cautioned and sworn, testified as follows:

Direct Examination by Mr. HILLIARD.

Q. 1. What is your name and age?

A. William Kleimenhagen; age, 48.

Q. 2. And your resident and occupation?

A. 4122 North Seventh Street, Philadelphia; occupation, polisher.

Q. 3. How long have you been a polisher?

A. I am a polisher for 26 years.

Q. 4. Did you know the concern of Hawthorne & Sheble, of Philadelphia, at any time?

A. I worked for them.

Q. 5. When did you go to work for them?

A. I guess it was 1898; I think it was 1898; I am not positive—1888 or 1898—I am not positive. It is easy enough to find out. I started there two weeks after President McKinley got elected the second time.

Q. 6. Was that in 1898?

A. Yes, I think it was in 1898; that was two weeks after he got elected the second time; I started on the 16th of November and he got elected about the 8th of November; that was a week after.

(Deposition of William Kleimenhagen.)

Q. 7. That was his second election?

A. His second election.

Q. 8. Are you sure it wasn't in 1903 that McKinley was elected the second time?

A. I couldn't say for sure; I think it was 1898 or 1899.

Q. 9. Didn't you tell me Sunday, when I saw you, that you went to work for Hawthorne & Sheble in 1903, and that you fix the date for the reason McKinley had just been elected the second time; was that correct? [728]

A. Yes, sir, that is what I told you. I am not sure whether it was 1903 or 1899; I am not sure about that. It is easy enough to find out.

Q. 10. It was after President McKinley was elected the second time; you are positive of that?

A. Yes.

Q. 11. What kind of horns were they making when you first went to work for them?

A. Nothing but the round horns.

Q. 12. How long did you work for them?

A. I worked for them for about ten and a half years; I worked till they closed up the business.

Q. 13. Do you know what a flower horn is?

A. Yes.

XQ. 14. What is a flower horn? How is it made?

A. Made out of about six or seven pieces of metal.

Q. 15. What is the shape of the pieces?

A. Wide in the front and narrow up to the top.

Q. 16. Are the edges of the pieces of which the flower horn is made straight or curved?

(Deposition of William Kleimenhagen.)

A. The edges on the long way or the end?

Q. 17. The long way.

A. When they are punched out they are straight; then they get bent over after, the edge get bent over.

Q. 18. Are both ends of the piece of the same width or different widths. Just consider the piece before it is put in the horn; what shape does it appear in?

A. It is wide in the front and runs up narrow to the top.

Q. 19. Does the edge of the piece run on an exact straight line in a flower horn, that is, before it is put in the horn?

A. It runs on a straight line and is wide on the bottom and narrow on the top.

Q. 20. How are the edges joined together?

A. Lapped together.

Q. 21. Did Hawthorne & Sheble make any horns like that which you [729] have described.

A. Lots of them.

Q. 22. When did they begin to make such horns?

A. I couldn't tell you.

Q. 23. Was it after you went to work for them?

A. Yes, after I went to work for them.

Q. 24. Can you say how long after you went to work for them did they make these horns?

A. It was about a year, or a year and a half after I went to work for them.

Q. 25. Do you remember when the Spanish War took place? A. Yes.

Q. 26. When was that?

A. I think it was in 1905 or 1906.

(Deposition of William Kleimenhagen.)

Q. 27. The Spanish War in 1905?

A. In 1908.

Q. 28. You mean, 1898.

By Mr. CRUSE.—I object to the examiner suggesting dates to the witness.

A. The Spanish War?

Q. 29. Do you mean the Spanish War was in 1908 or 1898? A. That was in 1898.

Q. 30. How long was it after the Spanish War that you went to work for Hawthorne & Sheble?

A. A year. That is a thing I cannot tell you very well; I did not keep books and can't keep it in my mind. I told you I started two weeks after President McKinley was elected the second time, and that is all I can tell you.

Q. 31. You were subpoenaed to come here, weren't you? A. Yes.

Q. 31. You told me Sunday that you wouldn't come and testify here, didn't you?

A. I had to come if you send that man up.

Q. 32. You told me Sunday you wouldn't come here and testify? A. Yes.

Q. 33. And your wife told you you couldn't come and testify, didn't she? [730]

A. Yes, when you send the marshal up I have to come; that is one sure thing.

Q. 34. You understand that you are under oath here, don't you?

A. Yes, I understand that.

Direct examination closed.

(Deposition of William Kleimenhagen.)

Cross-examination by Mr. CRUSE.

XQ. 35. You are not sure when Hawthorne & Sheble strated to make the flower horns, are you?

A. Not sure, no.

XQ. 36. You have no means of fixing the date?

A. No, that is impossible for me to do, that is impossible; I did not take that much notice of it.

Cross-examination closed.

Deposition closed.

By Mr. HILLIARD.—The testimony in the case of Searchlight Horn Company against Sherman, Clay & Co., will be proceeded with at Pittsburgh on the 14th day of August, 1914, under the notice of taking testimony served in that case, and according to agreement with defendant's counsel in that case.

By Mr. CRUSE.—Counsel for defendant asks when further testimony will be taken in this case, if any.

By Mr. HILLIARD.—Counsel for complainant states that he is at present unable to say. If any further testimony is taken in this case on behalf of the complainant, notice will be given in due form in pursuance with the statute.

[Endorsed]: Filed Feb. 3, 1916. W. B. Maling, clerk. By J. A. Schaertzer, Deputy Clerk. [731]

At a stated term, to wit, the November term, A. D. 1915, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the City and county of San Francisco, on Monday, the 29th day of November, in the year of our Lord, one thousand nine hundred and fifteen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 30—EQUITY.

SEARCHLIGHT HORN CO.

vs.

COLUMBIA GRAPHOPHONE CO.

Order that Decree be Entered.

This suit heretofore submitted being now fully considered, it is ordered that a decree be signed, filed and entered in favor of plaintiff. [732]

At a stated term of the District Court of the United States for the Northern District of California, Second Division, to wit, the November, 1915 term, held at the courtroom thereof at the city and county of San Francisco, State of California, on the 29th day of November, A. D. 1915. Present: Honorable WILLIAM C. VAN FLEET, United States District Judge.

IN EQUITY.—No. 30.

SEARCHLIGHT HORN COMPANY,

Plaintiff,

vs.

COLUMBIA GRAPHOPHONE COMPANY,

Defendant.

Interlocutory Decree.

This cause came on to be heard at this term and was argued by counsel; thereupon upon consideration thereof, it was ORDERED, ADJUDGED AND DECREED as follows, viz.:

1. That during all the time of the alleged acts of infringement mentioned in the bill of complaint, the plaintiff was and still is a corporation created under the laws of the State of New York; that at all said times the defendant was and is now a corporation created under the laws of the State of West Virginia, and up to and until February 1, 1913, was known as and called Columbia Phonograph Company General; that on said February 1st, 1913, defendant changed its name from Columbia Phonograph Company General to Columbia Graphophone [733] Company and ever since said last named ray has been and is now known as and called Columbia Graphophone Company.

2. That the letters patent of the United States, numbered 771,441, and dated October 4th, 1904, were duly issued and delivered by the Government of the United States to Peter C. Neilsen on October 4th, 1904, for improvements in horns for phono-

graphs or similar machines: that the said Peter C. Nielsen was the original and first inventor of the invention described and claimed in said letters patent and that said letters patent are good and valid in law as to claims 2 and 3 thereof—those being the only claims in respect of which infringement was charged; that by virtue of the assignments in writing duly executed and delivered and thereafter recorded in the Patent Office of the United States, the Searchlight Horn Company, plaintiff herein, on January 4, 1907, became and ever since has been and is now the sole owner and holder of the said letters patent and all the rights, liberties and privileges by them granted and conferred, together with all rights, claims, demands and causes of action arising out of past infringements of said letters patent.

3. That the invention covered by said letters patent and protected by claims 2 and 3 thereof is of value and utility and the plaintiff and its predecessors have practiced the same, and made and sold devices covered thereby, and upon each of the said devices so made and sold have stamped the word "Patented," together with the date and number of the said letters patent.

4. That since the issuance of said letters patent and within six years prior to the commencement of this suit, and within the Northern District of California and elsewhere in the United States, the defendant herein (known as Columbia [734] Phonograph Company General, prior to February 1, 1913,

and since then as Columbia Graphophone Company) without the license or consent of plaintiff, has infringed upon claims 2 and 3 of said letters patent, No. 771,441, by selling horns for phonographs or similar machines containing and embodying the invention described in said letters patent and claimed and protected in and by claims 2 and 3 thereof, which said claims read as follows:

2. A horn for phonographs and similar machines, the body portion of which is composed of longitudinally arranged strips of metal provided at their edges with longitudinal outwardly directed flanges whereby said strips are connected and whereby the body portion of the horn is provided on the outside thereof with longitudinally arranged ribs, said strips being tapered from one end of said horn to the other, substantially as shown and described.

3. A horn for phonographs and similar instruments, said horn being larger at one end than at the other and tapered in the usual manner, said horn being composed of longitudinally arranged strips secured together at their edges and the outer side thereof at the points where said strips are secured together being provided with longitudinal ribs, substantially as shown and described.

And in particular the defendant has infringed upon said claims 2 and 3 by selling in connection with phonographs or similar machines, those certain horns known as and called "Flower Horns."

5. That each and all of the allegations of the bill

of complaint herein are true, and that none of the defenses set up in defendant's answer is sustained by the evidence and that each and all of said defenses be and the same are hereby overruled.

6. And it is further **ORDERED, ADJUDGED AND DECREED** that the defendant, Columbia Graphophone Company, a corporation created under the laws of the State of West Virginia, its officers, agents, servants, attorneys, workmen and employees, and each of them, be and they are hereby permanently enjoined and restrained [735] from making, using or selling any horn or horns for phonographs or similar machines containing or embodying the invention claimed and patented in and by said claims 2 and 3 of said letters patent No. 771,441, or either of them, and that a permanent writ of injunction be issued forthwith under the seal of this court commanding and enjoining the said defendant, its officers, agents, servants, attorneys, workmen and employees, as aforesaid.

7. That the plaintiff do have and recover of and from the defendant, Columbia Graphophone Company, the profits which the defendant has realized and the damages the plaintiff has suffered from and by reason of the infringement aforesaid, and for the purpose of ascertaining the amount of said damages and profits, it is **ORDERED, ADJUDGED AND DECREED** that this cause be referred to H. M. Wright, Esq., Standing Master in Chancery of this court, to ascertain, take, state and report to this Court an account of all the profits received, realized or accrued by or to the defendant and to

assess the damages suffered or sustained by the plaintiff from or by reason of the infringement aforesaid and that on said accounting the plaintiff have the right to cause an examination of the officers, agents, employees and servants of the defendant *ore tenus* or otherwise, and also the production of its books, vouchers, documents and records, and that the said officers of defendant attend for such purpose before the Master from time to time as the Master shall direct.

8. It is further ORDERED, ADJUDGED, AND DECREED that the plaintiff do have and recover its costs and disbursements in this suit taxed at the sum of \$68.80 up to this date, and such other and further costs as may hereafter accrue and be taxed against defendant.

Dated Dec. 2, 1915.

WM. C. VAN FLEET,
Judge. [736]

Service of the within Interlocutory Decree admitted this 1st day of December, A. D. 1915.

CHAS. E. TOWNSEND,
Attorney for Defendant.

[Endorsed]: Filed and entered December 2, 1915. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [737]

*In the District Court of the United States for the
Northern District of California, Second Division.*

No. 30—IN EQUITY.

SEARCHLIGHT HORN COMPANY,

Plaintiff,

vs.

COLUMBIA GRAPHOPHONE COMPANY,

Defendant.

Petition for Order Allowing Appeal.

To the Honorable Court, Above Entitled:

The above-named defendant, Columbia Graphophone Company, conceiving itself aggrieved by the decree filed and entered on the 2d day of December, 1915, in the above-entitled cause, does hereby appeal therefrom to the United States Circuit Court of Appeals, for the Ninth Judicial Circuit for the reasons and upon the grounds specified in the assignment of errors, which is filed herewith, and prays that this appeal may be allowed, that a citation issue as provided by law, and that a transcript of the record, proceedings, exhibits and papers, upon which said decree was made and entered as aforesaid, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco.

And your petitioner further prays that an order be made fixing the amount of security which the defendant, Columbia Graphophone Company, shall

give and furnish upon such appeal, and that upon giving such security all further proceedings in this court be suspended and stayed until the determination of said appeal by said United States Circuit Court of Appeals for the Ninth Circuit.

C. A. L. MASSIE,

CHAS. E. TOWNSEND,

Solicitors for Columbia Graphophone Company, Defendant.

[Endorsed]: Filed Dec. 31, 1915. Walter B. Maling, Clerk. [738]

*In the United States Circuit Court of Appeals in
the Ninth Circuit in the Northern District of
California.*

COLUMBIA GRAPHOPHONE COMPANY,

Appellant,

vs.

SEARCHLIGHT HORN COMPANY,

Appellee.

Assignment of Errors.

Now comes Columbia Graphophone Company, defendant in the cause in the court below, entitled "Searchlight Horn Company, Plaintiff vs. Columbia Graphophone Company, Defendant." In Equity—No. 30, in the District Court of the United States for the Northern District of California, Second Division, and appellant herein, by C. A. L. Massie, Esq. and Chas. E. Townsend, Esq., its solicitors and counsel, and say that in the record and

proceedings in the said cause in the said court below there is manifest error, and it particularly specifies the following as the errors upon which it will rely and which it will urge upon its appeal in the above-entitled cause:

1. That the district Court of the United States for the Northern District of California erred in holding that the claims of plaintiff's patent, or any of them, and especially claims 2 and 3 sued on, were, or either of them, valid.

2. That the District Court of the United States for the Northern District of California erred in holding that the claims of plaintiff's patent, and especially the claims sued on, were not each and all anticipated by the prior art.

3. That the District Court of the United States for [739] the Northern District of California erred in holding that the claims of the plaintiff's patent sued on, or any of them, represented a patentable invention.

4. That the District Court of the United States for the Northern District of California erred in finding that more than mere mechanical skill was exhibited by Nielsen in view of the prior art.

5. That the District Court of the United States for the Northern District of California erred in not finding that on the evidence the Nielsen Patent was without patentable utility and novelty.

6. That the District Court of the United States for the Northern District of California erred in finding any utility in a horn constructed in full accordance with all of the disclosures of the Nielsen Pat-

ent which was not found equally well and to the same extent in horns of the prior art.

7. That the District Court of the United States for the Northern District of California erred in finding that there was no prior publication of the features embodied in the claims of the Nielsen Patent, such as would invalidate it.

8. That the District Court of the United States for the Northern District of California erred in not holding that the design of the Nielsen patented horn was without utility.

9. That the District Court of the United States for the Northern District of California erred in determining and deciding that the patentee of the patent in suit was the first and original of any inventor or discoverer of the said alleged invention as described and claimed in the said patent and the specifications annexed thereto. [740]

10. That the District Court of the United States for the Northern District of California erred in holding that claim 2 of the Nielsen Patent in suit was infringed by the defendant.

11. That the District Court of the United States for the Northern District of California erred in holding that claim 3 of the Nielsen Patent in suit was infringed by the defendant.

12. That the District Court of the United States for the Northern District of California erred in holding that the defendant infringed any of the claims of the Nielsen Patent in suit.

13. That the District Court of the United States for the Northern District of California erred in con-

struing the claims of the Nielsen Patent so broadly as to include any horns used or sold by the defendant.

14. That the District Court of the United States for the Northern District of California erred in enjoining the defendant.

15. That the District Court of the United States for the Northern District of California erred in granting an injunction against the defendant, on the ground that the plaintiff was not entitled to such relief because of laches, as set forth in defendant's answer.

16. That the District Court of the United States for the Northern District of California erred in ordering an accounting by the defendant on the ground that the plaintiff was not entitled to such relief because of laches, as set forth in the defendant's answer.

17. That the District Court of the United States for the Northern District of California erred in ordering an [741] accounting by the defendant on the ground that the plaintiff failed to show that its horns made under the Nielsen Patent were marked "Patented" as required by law.

18. That the District Court of the United States for the Northern District of California erred in ordering an accounting by the defendant on the ground that the plaintiff has failed to show that it notified the defendant of its alleged infringement of the Nielsen Patent in suit.

19. That the District Court of the United States for the Northern District of California erred in not

finding and holding that on the evidence the Nielsen Patent was void as containing less than the whole truth relative to the alleged invention or discovery or more than was necessary to produce the desired result, in that the so-called results of the Nielsen Patent were not and are not obtainable by the method or methods or construction therein shown, or described, or claimed.

20. That the District Court of the United States for the Northern District of California erred in not holding that the so-called extensive or general use of the Nielsen patented horn was due to extensive advertising or greater business efforts in bringing the horns to the attention of the public rather than to any particular merit of the device.

21. That the District Court of the United States for the Northern District of California erred in finding in favor of the plaintiff and against the defendant on the ground that the evidence was insufficient to support the findings of the Court.

22. That the District Court of the United States for the Northern District of California erred in sustaining the bill of complaint.

23. That the District Court of the United States for the [742] Northern District of California erred in not dismissing the complaint as prayed for by the defendant.

In order that the foregoing assignments of errors may be and appear of record, the appellant presents the same to the Court, and prays that such disposition be made thereof as in accordance with the law

and the statutes of the United States in such cases made and provided.

All of which is respectfully submitted.

C. A. L. MASSIE,
CHAS. E. TOWNSEND,
Solicitors for Appellant.

[Endorsed]: Filed Dec. 21, 1915. Walter B. Mal-
ing, Clerk. [743]

*In the District Court of the United States for the
Northern District of California, Second Divi-
sion.*

IN EQUITY—No. 30.

SEARCHLIGHT HORN COMPANY,
Plaintiff,
vs.

COLUMBIA GRAPHOPHONE COMPANY,
Defendant.

Order Allowing Withdrawal of Original Exhibits.

On motion of C. A. L. Massie, Esq., and Charles E. Townsend, Esq., solicitors and of Counsel for Columbia Graphophone Company, Defendant, and good cause appearing therefor, it is by the Court now ordered:

That all the exhibits in the above-entitled case, both plaintiff's exhibits and defendant's exhibits, and all of the exhibits in the case of Searchlight Horn Co. vs. Pacific Phonograph Co., No. 18, pending in this court, including models, drawings, copies of patents, books and printed publications, and which are impracticable to have copied or duplicated, be, and

hereby are, allowed to be withdrawn from the files of the court in this case, and in the said Pacific Phonograph case, No. 18, and transmitted by the clerk of this court to the United States Circuit Court of Appeals for the Ninth Circuit as a part of the record upon appeal for the defendant herein to said Circuit Court of Appeals; said original exhibits to be returned to the files of this court upon the determination of said appeal by said Circuit Court of Appeals.

WM. C. VAN FLEET,

Judge.

Dated December 31st, 1915.

[Endorsed]: Filed Dec. 31, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [744]

*In the District Court of the United States for the
Northern District of California, Second Division.*

No. 30—IN EQUITY.

SEARCHLIGHT HORN COMPANY,

Plaintiff,

vs.

COLUMBIA GRAPHOPHONE COMPANY,

Defendant.

Order Allowing Appeal.

The foregoing petition for appeal is hereby granted and the appeal is allowed and upon the petitioner filing a bond in the sum of One Thousand (\$1,000) Dollars with sufficient sureties, to be conditioned as required by law, shall operate to suspend

and stay all further proceedings in this court until the determination of said appeal by the United States Circuit Court of Appeals for the Ninth Circuit.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Dec. 31, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [745]

*In the District Court of the United States for the
Northern District of California, Second Division.*

No. 30—IN EQUITY.

SEARCHLIGHT HORN COMPANY,
Plaintiff,

vs.

COLUMBIA GRAPHOPHONE COMPANY,
Defendant.

Amended Order Allowing Appeal.

The order allowing appeal heretofore made and filed in this court on December 31, 1915, is hereby amended to read as follows:

The foregoing petition for appeal is hereby granted and the appeal is allowed and upon the petitioner filing a bond in the sum of Five Thousand (\$5,000) Dollars with sufficient sureties, to be conditioned as required by law, shall operate to suspend and stay all further proceedings in this court until the determination of said appeal by the United States Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that the filing of a bond in the sum of Four Thousand (\$4,000) Dollars in addition to the one of One Thousand (\$1,000) Dollars now on file shall be a full compliance with this order.

This order is made *nunc pro tunc* as of December 31, 1915.

WM. C. VAN FLEET,
Judge.

Dated January 18th, 1916.

[Endorsed]: Filed Jan. 18, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [746]

*In the District Court of the United States for the
Northern District of California, Second Division.*

No. 30—IN EQUITY.

SEARCHLIGHT HORN COMPANY,
Plaintiff,

vs.

COLUMBIA GRAPHOPHONE COMPANY,
Defendant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, the Columbia Graphophone Company, the appellant herein, as principal, and The Aetna Accident and Liability Company, a corporation duly organized and existing under the laws of the State of Connecticut and duly licensed to transact its business in the State of California, as surety, are held and firmly bound unto the above-named appellee, the Searchlight Horn Company, in the sum of One Thou-

sand (\$1,000) Dollars, lawful money of the United States of America, for the payment of which, well and truly to be made unto the said Searchlight Horn Company, its successors and assigns, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents; upon condition nevertheless, that

WHEREAS, the said appellant has an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the interlocutory decree rendered and entered by the District Court of the United States, in and for the Northern District of California, in the case entitled "Searchlight Horn Company vs. Columbia Graphophone Company," numbered on the equity docket as 30, which said interlocutory decree was rendered [747] and entered in said District Court on the 2d day of December, 1915, and an appeal allowed superseding said decree.

NOW, THEREFORE, the condition of this obligation is such that if the above-named appellant shall prosecute said appeal to effect and answer all damages and costs, if it shall fail to make its plea good, then this obligation shall be void, otherwise to remain in full force and effect.

In witness whereof, the corporate name and seal of the said principal is hereunto affixed and attested by its duly authorized officer and the corporate name and seal of the said surety is hereunto affixed and attested by its duly authorized officer, at San Fran-

cisco, California, this 31st day of December, 1915.

COLUMBIA GRAPHOPHONE COMPANY.

By I. A. DENISON,

District Manager.

THE AETNA ACCIDENT AND LIABILITY
COMPANY.

By G. D. STUART,

Resident Vice-president.

Attest: W. P. KARR, [Seal]

Resident Asst. Secretary.

Approved this 31st day of December, 1915.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Dec. 31, 1915. Walter B. Mal-
ing, Clerk. [748]

THE AETNA ACCIDENT AND LIABILITY
COMPANY,

Hartford, Connecticut.

MORGAN G. BULKELEY, President.

*In the District Court of the United States for the
Northern District of California, Second Divi-
sion.*

No. 30—IN EQUITY.

SEARCHLIGHT HORN COMPANY,

Plaintiff,

vs.

COLUMBIA GRAPHOPHONE COMPANY,

Defendant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That we, the Columbia Graphophone Company, the appellant herein, as principal, and The Aetna Accident and Liability Company, a corporation organized and existing under the laws of the State of Connecticut, and duly licensed to transact its business in the State of California, as surety are held and firmly bound unto the above-named appellee, The Searchlight Horn Company, in the sum of Four Thousand (\$4,000) Dollars, lawful money of the United States of America, for the payment of which, well and truly to be made unto the said Searchlight Horn Company, its successors or assigns, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents; upon condition nevertheless, that

WHEREAS, the said appellant has an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the interlocutory decree rendered and entered by the District Court of the United States, in and for the Northern District of California, in the case entitled "Searchlight Horn Company vs. Columbia Graphophone Company" numbered on the equity docket as 30, which said interlocutory decree was rendered and entered in said District Court on the 2d day of December, 1915, and an appeal allowed superseding said decree.

NOW, THEREFORE, the condition of this obligation is such that if the above-named appellant shall prosecute said appeal to effect and answer all damages and costs, if it shall fail to make its plea good,

then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the corporate name and seal of the said principal is hereunto affixed and attested by its duly authorized officer and the corporate name and seal of the said surety is hereunto affixed and attested by its duly authorized officers at San Francisco, California, this eighteenth day of January, 1916.

COLUMBIA GRAPHOPHONE CO.

F. A. DENISON,

Dist. Manager.

[Seal] THE AETNA ACCIDENT AND LIABILITY COMPANY.

By G. D. STUART,

Resident Vice-president.

Attest: W. P. KARR,

Resident Asst. Secretary. [749]

The within bond is approved this 18th January, 1916.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Jan. 18, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [750]

[Copy of Docket Entries.]
United States District Court.

Docket 30.

Title of Case.	Attorneys.
SEARCHLIGHT HORN COMPANY,	John H. Miller, substituted for
	John H. Miller & W. K. White,
vs.	Eq: Infringement of Patent.
	C. A. Massie—Ralph L. Scott
COLUMBIA GRAPHOPHONE COM-	Mauro, Cameron, Lewis & Mas-
PANY.	sie, Chas. E. Townsend.

Date.

Month. Year. Year.

Filings—Proceedings.

July 24, 1913.	Filed Bill of Complaint. Filed Praeipie. Issued Subpoena ad res. and 1 copy.
“ 29, “	Filed Subpoena ad res., with Marshal's return showing service on Columbia Graphophone Co., on July 24, 1913.
Aug. 18, “	Filed Stipulation ex. time to answer, etc.
Oct. 20, “	Filed Answer.
Jan. 9, 1914.	Filed Stipulation and Order extending time to take depositions. Entered Order. (O. B. No. 1, p. 171).
Mar. 2, “	Ord. cause stricken from Calendar.
Apr. 13, “	Filed Stipulation and Order ex. time—depositions. Entered Order (O. B. 1, p. 239).
May 14, “	Filed Stip. and Order ex. time. Entered Order (O. B. 1, p. 258).

Date.			Filings—Proceedings.
Month.	Year.	Year.	
June	9,	“	Filed Stipulation and Order ex. time. Entered Order (O. B. 1, p. 330).
June	25,	“	Filed Stipulation and Order as to time for taking Depositions. Entered Order (O. B. No. 1, p. 337). [751]
July	14,	1914.	Filed Notice of Motion and Affidavit for Preliminary Injunction.
“	27,	“	Ord. mo. con. to Aug. 10.
Aug.	6,	“	Filed Letter associating counsel.
“	10,	“	Ord. mo. con. to 24.
“	24,	“	Ord. mo. con. to 31.
Sept.	14,	“	Ord. mo. con. to 28.
Oct.	5,	“	Ord. mo. con. to 26.
“	26,	“	Ord. mo. con. to Nov. 9.
Nov.	9,	“	Ord. cause dropped from Calendar. Or. mo. con. to 16.
“	16,	“	Ord. mo. con. to 23.
“	23,	“	Ord. mo. con. to 30.
“	30,	“	Ord. mo. con. to Dec. 7.
Dec.	7,	“	Ord. mo. con. to 14.
“	14,	“	Ord. mo. con. to 21.
“	21,	“	Ord. mo. con. to Jan. 4, '15.
“	31,	“	Filed Notice of substitution of Atty.
Jan.	4,	1915.	Ord. mo. con. to 11.
“	11,	“	Ord. mo. con. to 18.
“	18,	“	Ord. mo. con. to 25.

942 *Columbia Graphophone Company vs.*

Date. Month.	Year.	Year.	Filings—Proceedings.
"	25,	"	Ord. mo. con. to Feb. 1.
Feb.	1,	"	Ord. mo. con. to 8.
"	8,	"	Ord. con. to 15.
Feb.	11,	"	Filed Notice of Motion to restore case to calendar.
"	15,	"	Ord. mo. for preliminary injunction con. to Mar. 15. Ord. mo. to restore cause to calendar granted.
Mar.	1,	"	Ord. cause set for 31.
"	15,	"	Ord. mo. con. to 22.
"	22,	"	Filed stipulation continuing cause. Ord. cause dropped from Calendar. Ord. motion for injunction granted and preliminary injunction issue, bond fixed at \$2000. [752]
Mar.	24,	1915.	Filed Bond on Preliminary Injunction. Issued Writ of Injunction. Made 2 attested copy of Writ of Injunction. Filed Writ of Injunction.
June	16,	"	Filed Stipulation regarding admission of evidence at trial.
"	21,	"	Filed Notice of Motion to reinstate case on Calendar.
"	28,	"	Ord. motion to reinstate cause on Calendar granted.
July	26,	"	Ord. cause set for Aug. 17.

Date.			Filings—Proceedings.
Month.	Year.	Year.	
Aug.	13,	“	Filed Stipulation and Order continuing trial of case. Entered Order (O. B. 2, p. 395). Filed Notice and Motion to Amend Answer, etc.
“	16,	“	Ord. mo. con. to 23.
“	23,	“	Ord. mo. to amend ans. heard and granted.
“	26,	“	Ord. dropped from trial Cal. and placed on Nov. term Cal.
Nov.	1,	“	Ord. cause set for Nov. 16.
“	22,	“	Filed Notice of Motion for continuance, etc.
“	23,	“	Ord. motion to continue suit for term argued, submitted and denied, and cause submitted.
“	29,	“	Ord. decree signed, filed and entered in favor of plff.
Dec.	2,	“	Filed and entered Interlocutory Decree (Eq. Journal No. 2, p. 188).
“	6,	“	Filed Praecipe. Made certified copy of Interlocutory Decree. Filed Memorandum of Costs.
“	31,	“	Filed Petition for Appeal. Filed Assignment of Errors. Filed and entered Order allowing Appeal. (O. B. 3, p. 142). Filed and entered Order allowing withdrawal of original exhibits. (O. B. 3, p. 143). Filed Bond on Appeal.

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Date.			Filings—Proceedings.
Month.	Year.	Year.	
Jan.	3,	1916.	Filed Citation on Appeal.
“	14,	“	Filed Notice of Motion to vacate Order staying [753] proceedings, etc.
“	17,	“	Ord. order allowing appeal and fixing amount of bond amended, etc.
“	18,	“	Filed Add'l. Bond on Appeal. Filed and entered Amended Order allowing appeal. (O. B. 3, p. 182.)
“	22,	“	Filed Reporter's Transcript of Proceedings of Nov. 23, 1915. Filed Praeipe for Transcript on Appeal.
“	25,	“	Filed Plffs. Praeipe.
“	26,	“	Filed Notice of Motion to vacate Order staying proceedings.
“	31,	“	Ord. mo. con. to Feb. 7.
Feb.	7,	“	Ord. motion to vacate order staying proceedings argued and submitted.
“	8,	“	Filed Defts. reply mem. on motion to vacate order staying proceedings. [754]

*In the District Court of the United States for the
Northern District of California, Second Division.*

IN EQUITY—No. 30.

SEARCHLIGHT HORN COMPANY,

Plaintiff,

vs.

COLUMBIA GRAPHOPHONE COMPANY,

Defendant.

Praeipie for Transcript on Appeal.

To the Clerk of U. S. District Court:

Please incorporate the following papers, documents and exhibits in the transcript of record on appeal in the above-entitled cause:

1. Bill of Complaint.
2. Defendant's Answer.
3. Amendment to the Answer embodied in defendant's Motion to amend on file.
4. Stipulation of June 10, 1915, on file concerning admission of evidence, etc.
5. Reporter's transcript of proceedings on final hearing.
6. Opinion of the Court in the case of the same plaintiff vs. Pacific Phonograph Co., in Equity #18 in this Court, decided November 29th, 1915.
7. Interlocutory decree of December 2, 1915.
8. Petition for Order Allowing Appeal.
9. Petition allowing withdrawal of Exhibits.
10. Order allowing appeal.

11. Assignment of Errors.
12. Amended Order Allowing Appeal.
13. Memorandum of bonds on appeal.
14. Citation.
15. Docket Entries (District Court) in the cause.
[755]
16. Copy of Praeceptum.
17. Order re Form of Record on Appeal.
18. The depositions and testimony of the following
named witnesses:

On behalf of plaintiff on file in this court in cases #15,623 of the same plaintiff vs. Sherman, Clay & Company and #18 of the same plaintiff vs. the Pacific Phonograph Company: Christian Krabbe, Ed. A. Merritt, William H. Locke, Jr., Arthur Pettit, and constituting the plaintiff's record in chief.

On behalf of the defendant the depositions of the following-named witnesses on file in said suits of the same plaintiff vs. Sherman, Clay & Company, #15,623, and the same plaintiff vs. Pacific Phonograph Company, #18, to wit: Rudolph Hunter, W. H. Miller, Harvey N. Emmons, Ed. W. Meeker, Frank H. Stewart, J. Kaiser, C. A. Senne, E. A. Hawthorne, William J. Elwell, John H. George, William A. Lawrence, William E. Parker, Eugene Henry Byrnes, Paul Kohler, Harry Leeming, Albert C. Ireton.

On behalf of plaintiff in rebuttal: Baldwin Vale, McNeill, Kuenstle, Sheerer, Domidge, Mayer, Wacks and Kleimenhagen on file in said cases #15,623 and #18.

Together with all exhibits introduced in connec-

tion with any and all of said depositions and the exhibits introduced on final hearing herein; including all the prior patents and printed publications introduced by the defendants in either of said case #15-623 and #18.

C. A. L. MASSIE,
CHAS. E. TOWNSEND,

Attorneys for Defendant-Appellant.

Service of copy of the within Praeceptum for Transcript on Appeal, admitted this 22d day of January, A. D. 1916.

JOHN H. MILLER,
Atty. for Plaintiff.

[Endorsed]: Filed Jan. 22, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [756]

*In the District Court of the United States for the
Northern District of California, Second Division.*

IN EQUITY—No. 30.

SEARCHLIGHT HORN COMPANY,
Plaintiff,

vs.

COLUMBIA GRAPHOPHONE COMPANY,
Defendant.

**Praeceptum of Plaintiff Regarding Record on Appeal
Pursuant to Equity Rule 75.**

To the Clerk of the Above-entitled Court:

Now comes the plaintiff in the above-entitled suit in pursuance to provisions of Equity Rule 75, and

indicates the following additional portions of the record desired by it to be incorporated in the Transcript on Appeal, the same not having been indicated or specified in the praecipe heretofore filed by defendant on January 22d, 1916, that is to say:

1. Stipulation between the parties dated January 6, 1914, and filed January 9th, 1914, extending time to take depositions.
2. Stipulation dated April 9, 1914, and filed April 13, 1914, extending time to take depositions.
3. Stipulation dated May 11, 1914, and filed May 14, 1914, extending time to take depositions.
4. Stipulation dated May 29, 1914, and filed June 9, 1914, extending time to take depositions.
5. Stipulation dated June 24, 1914, and filed June 25th, 1914, extending time to take depositions.
6. Notice of motion for preliminary injunction and attached affidavits of Locke, Vale and Miller, together with the exhibits [757] referred to therein.
7. Order granting preliminary injunction.
8. Writ of Injunction.
9. Minute Order for Interlocutory decree.
10. Two bonds on appeal furnished by defendant.

JOHN H. MILLER,
Attorney for Plaintiff-Appellee.

Service of the within Praecipe of Plaintiff regarding record on appeal pursuant to Equity Rule 75 admitted this 25th day of January, A. D. 1916.

CHAS. E. TOWNSEND,
Attorney for Defendant-Appellant.

[Endorsed]: Filed Jan. 25, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [758]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 30—EQUITY.

SEARCHLIGHT HORN COMPANY,

Plaintiff,

vs.

COLUMBIA GRAPHOPHONE COMPANY,

Defendant.

**Clerk's Certificate to Transcript of Record on
Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing seven hundred fifty-eight (758) pages, numbered from 1 to 758 inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipes for transcript of record (omitting therefrom the original exhibits, which by order of Court are transmitted herewith), as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$463.20; that said amount was paid by Charles E. Townsend, Esq., attorney for defendant; and that the original Citation issued

herein is hereunto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 10th day of March, A. D. 1916.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

[Ten Cent Internal Revenue Stamp. Canceled
3/10/16. J. A. S.] [759]

[Citation on Appeal.]

UNITED STATES OF AMERICA,—ss.

The President of the United States, To the Searchlight Horn Company, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court for the Northern District of California, wherein the Columbia Graphophone Company is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the

Northern District of California, this 3d day of January, A. D. 1916.

WILLIAM C. VAN FLEET,
United States District Judge. [760]

[Endorsed]: No. 30. United States District Court for the Northern District of California. Columbia Graphophone Company, Appellant, v̄s. Searchlight Horn Company. Citation on Appeal. Filed Jan. 3, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

United States of America,—ss.

On this 3d day of January, in the year of our Lord one thousand nine hundred and sixteen, personally appeared before me, the undersigned notary, the subscriber, Arne Hoisholt, and makes oath that he delivered a true copy of the within citation to Mr. Ober, the assistant clerk to John H. Miller, attorney for the appellee herein.

ARNE HOISHOLT.

Subscribed and sworn to before me at San Francisco, this 3d day of January, A. D. 1916.

[Seal]

W. W. HEALY,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: No. 2759. United States Circuit Court of Appeals for the Ninth Circuit. Columbia Graphophone Company, a Corporation, Appellant, vs. Searchlight Horn Company, a Corporation, Appellee. Transcript of the Record. Upon Appeal

952 *Columbia Graphophone Company vs.*

from the United States District Court for the Northern District of California, Second Division.

Filed March 10, 1916.

FRANK D. MONCKTON,
Clerk of United States Circuit Court of Appeals for
the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit, Northern District of Cali-
fornia.*

IN EQUITY.

COLUMBIA GRAPHOPHONE COMPANY,
Appellant,

vs.

SEARCHLIGHT HORN COMPANY,
Appellee.

Order Re Form of Record on Appeal.

Good cause appearing, it is ordered that the appellant in the above-entitled cause may file the evidence included in the record on appeal in the form of question and answer in the exact words of the witnesses.

WM. W. MORROW,
Judge.

Dated January 18, 1916.

[Endorsed]: No. 2759. In Equity. In the United States Circuit Court of Appeals, Ninth Circuit, Northern District of California. Columbia Graphophone Company, Appellant, vs. Searchlight Horn

Company, Appellee. Order Re Form of Record on Appeal. Filed Jan. 20, 1916. F. D. Monckton, Clerk. Refiled Mar. 10, 1916. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Judicial Circuit.*

COLUMBIA GRAPHOPHONE COMPANY,
Appellant,

vs.

SEARCHLIGHT HORN COMPANY,
Appellee.

**Order Enlarging the Time of Appellant [to March
1, 1916] for Docketing the Cause and Filing the
Record on Appeal.**

Good cause appearing therefor, it is hereby ordered that the appellant in the above cause, Columbia Graphophone Company, have to and including March 1, 1916, within which to docket the cause and file the record on appeal.

WM. C. VAN FLEET,
Judge.

[Endorsed]: No. ——. In Equity. In the United States Circuit Court, Ninth Judicial Circuit. Columbia Graphophone Company, Appellant, vs. Searchlight Horn Company, Appellee. Order Enlarging the Time of Appellant for Docketing the Cause and Filing the Record on Appeal. Filed Jan. 29, 1916. F. D. Monckton, Clerk.

*United States Circuit Court of Appeals for the Ninth
Circuit.*

COLUMBIA GRAPHOPHONE COMPANY,
Appellant,

vs.

SEARCHLIGHT HORN COMPANY.

**Order Extending Time [to March 15, 1916], to
Docket Cause and File Record.**

Good cause appearing therefor, it is ordered that the Appellant do have to and including the 15th day of March, 1916, within which to file the record thereof and docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated February 24, 1916.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to March 15, 1916, to File Record Thereof and to Docket Case. Filed Feb. 24, 1916. F. D. Monckton, Clerk.

No. 2759. United States Circuit Court of Appeals for the Ninth Circuit. Two Orders Under Rule 16 Enlarging Time to March 15, 1916, to File Record Thereof and to Docket Case. Refiled Mar. 10, 1916. F. D. Monckton, Clerk.